BIOETHICS
BIOHΘΙΚΗ

ARCHIVES OF HELLENIC MEDICINE 1999, 16(6):609–614
ΑΡΧΕΙΑ ΕΛΛΗΝΙΚΗΣ ΙΑΤΡΙΚΗΣ 1999, 16(6):609–614

Liberal and communitarian conceptions of medical need, with particular reference to the management of organ transplantation

B. Brecher

School of Historical and Critical Studies, University of Brighton, UK

Φιλελεύθερες και κοινωνισμικές αντιλήψεις για τις ιατρικές ανάγκες: αναφορά στη μεταμόσχευση οργάνων

Περίληψη στο τέλος του άρθρου

Key words

Communitarianism
Liberalism
Medical need
Organ transplants

1. INTRODUCTION

Despite the "triumph of liberalism", alternatives to so-called free market models of health care are still widely advocated. In particular, and across the entire range of social policy issues, communitarianism is often put forward as an alternative to liberalism, an alternative which avoids both a philosophical solipsism of the individual and the concomitant picture of society as a set of markets. Furthermore, practical considerations taken from medical ethics –questions of the management of waiting lists for organ transplant, for example– are often taken to bolster a communitarian outlook, inasmuch as they are held to illustrate that we "naturally" look after our own before those further away, whether socially, culturally or geographically. But, as consideration of the management of waiting lists for organ transplant suggests, communitarianism has no adequate answer to the question, Who is my neighbour? The universalism of the liberal tradition, whatever its other shortcomings, is an indispensable defence against both parochialism and the conservative status quo: and in matters of health care policy no less than in philosophical ethics.

2. LIBERALISM AND COMMUNITARIANISM

For classical liberals, and certainly according to those in the Anglo-Saxon, empiricist, tradition of liberalism, individuals are atomic units who come together to form associations insofar as these function in their interest: in brief, so as to avoid a life which is "nasty, poor, solitary, brutish and short".[1] Society is merely an agglomeration of individuals: as the neo-liberal ideologue Margaret Thatcher used to insist, there is really no such thing as society, but only individuals (and, she would inconsistently add, their families). According to that tradition our relations to others are modelled on a contract, whether explicit or implicit, entered into by independently subsisting individuals; and thus, ultimately, on the self-interest of those individuals. So we trade off duties against rights, and restrictions on ourselves against protection from others. One might, at the risk of some, but not much, exaggeration, say that for liberals it is individually initiated and individually assessed insurance which is the natural mode of self-protection against the accidents and exigencies of life. Anything else smacks too much of an illegitimate paternalism, as J.S. Mill argued:[2]

To individuality should belong the part of life in which it is chiefly the individual that is interested; to society, the part which chiefly interests society... But neither one person, nor any number of persons, is warranted in saying to another human creature of ripe years, that he shall not do with his life for his own benefit what he chooses to do with it. It is hardly surprising, then, that the National

Health Service in the United Kingdom, even though it remains (for the moment) entirely a state, and not a private, system, should be based on a system of national insurance payments, even though these in fact constitute taxation, since they are compulsorily levied.

Communitarians, by contrast, locate the very possibility of being an individual within particular societies, cultures or communities: duties, rights, restrictions and protections constitute –to varying degrees– a framework into which we are born and which we can reject only by formal exit. Society has a life of its own, so to speak, as do all sorts of other institutions, such as the local football club, the Church or the universities; like these, society is more than the sum of its individual parts. It does not exist merely in the present: it has a past and, hopefully, a future, even though the individuals concerned are, respectively, long since dead and not yet born. On such a model, our relations to others have an organic structure, rather in the manner of an extended family. There is no question of any contract; we do not choose all the ties that bind, but are born into a specific structure of mutualities and responsibilities. Again to exaggerate somewhat, protection is not something we have to contract for, but is something we may reasonably expect from our neighbours as an expression of their and our common membership of society. We are not free-floating atoms, but elements of a larger structure; and society is a mutual institution. Thus, as Avner de-Shalit puts it,[3] a person is conceived as bound by social connections and relationships, and, among other things, her personality is actually defined by the obligations she has, so that "to divest oneself of such commitments would be, in one important sense, to change one's identity".[4]

The very idea of a Welfare State, then, requires at least a considerable modification to the liberal view: and indeed, it was under pressure from the communitarians' predecessors, the social liberals such as Hobhouse and Keynes, as well as from liberals seeking simply to avoid any socialist alternative after the Second World War, that the British Welfare State came into being.

These are of course all ideal-type descriptions and remarks, although the USA comes close in many ways to instantiating the liberal model; and the pressure in the UK, more than elsewhere in Europe, has been, and continues to be, in the American direction since the beginnings of the demise of the Welfare State in the 1970s. Furthermore there is an issue about the extent to which communitarianism is in fact a substantial alternative to liberalism, rather than simply an outcrop, of, and/or an excuse for, it. (For discussion of liberalism, communitarianism and their interrelations see[5–7]).

3. TWO MODELS OF MEDICAL NEED

This characterisation of liberalism and communitarianism, rudimentary though it is, suggests two very different ways in which our needs –and specifically our health needs– might be modelled. Liberals might be expected to look to market forms of exchange in this area as in all others, for health is just one human need among others and it is the market –a system of individual contracts allegedly freely entered into– which is the best, most efficient, means of serving such needs. In short, there is nothing which can be ruled out as simply not for sale: from blood and body parts, whether internal organs or genitalia, to labour and time. What I sell to others is entirely a matter of the balance of benefit to myself, within the limits of Mill's harm principle; equally, there are no principled limits on what anyone can buy–the harm principle in this case not withstanding. Thus Mill argues[8] that people cannot justifiably sell themselves into slavery, on pain of practical self-contradiction; but whatever the adequacy of that argument, what he entirely misses, as liberals must, is the moral problem constituted by the buyer's action.[9–12] In both cases that balance is something of which only the person concerned can be the judge. That is the fundamental principle of liberalism, from its everyday economic instantiations through to Rawls's Kant-inflected quasi-welfarist theorisations of distributive justice in his classic *Theory of Justice*.[13]

What is right and what is wrong in the distribution of resources, whether scarce or not, and as regards organs for transplant no less than any others, are the laws of supply and demand. Right and wrong are in all cases determined solely by the uncoerced –autonomous, to use the liberals' favourite term– acceptance or otherwise of inducements by potential donors or sellers (e.g. financial, moral or sentimental) to give or sell something which potential recipients (happen to) need from them. Thus, in the matter of organ donation or sale, liberals are likely to promote a "contracting in" structure, for those in need of an organ transplant have no *prima facie* claim on anyone to have their need met. It is for individuals to decide whether or not they wish to perform the supererogatory act of donating their organs for transplant after death. In brief, the matter of organ donation is one of charity, not duty.

Communitarians, in contrast, will place varying limits on the scope of the market. Typically there are things which neither the community nor the individual may sell: national or individual patrimony respectively, for example. The present generation is not entitled to sell off the national –or the local– land, whatever it may do with the

"family silver". Whatever the benefit to the individual, and however "autonomously" they might give their consent to the transaction, the harm thereby done to the community and its values rules out the sale and purchase of certain things: contemporary debates with and between various constituencies of feminists about the availability of pornography offer a clear example here. The model displayed in what purports to be a newspaper might well derive considerable benefit from her employment, and greater benefit from this than from other available jobs: but even if she is not, individually, harmed, her selling of her image, her body or herself harms certain constituencies–whether women, society or both.[14] In short, and unlike liberals, communitarians might be expected to recognise and respect the notion of morality-affecting goods and harms. Some actions and practices not only issue in direct consequences for specific individuals but also affect people's moral attitudes, the moral climate within which directly experienced harms and goods are identified, characterised and assessed as such. An example is the British Race Relations Act, which has resulted in, among other things, some people coming to recognise racism as a harm, who would otherwise not have done so. It is a morality-affecting good. A morality-affecting harm might –arguably– be, for instance, the National Lottery, or, indeed, the display of pornography in "newspapers" or advertisements.[15]

Thus, in the matter of organ donation or sale, the view of communitarians is likely to reflect closely that of Richard Titmuss in his unsurpassed defence of the prohibition of the sale of blood, *The Gift Relationship*.[16] They would emphasise our duties to fellow-citizens and eschew market-based practices and those which might encourage their acceptance, insisting on donorship and favouring a "contracting out" system of organ donation. Indeed, the present differences between the practices of various European countries reflect to a certain extent differences between classically, or neo-, liberal and more communitarian, welfarist, political tendencies and attitudes.

4. COMMUNITARIANISM AND PUBLIC HEALTH CARE

For those not committed to the free market morality and economics of liberalism, there are many positive reasons for favouring the communitarian over the liberal model.[17] Indeed, in light of the bankruptcy, rather than the triumph, of actually existing liberalism in Russia and elsewhere –a bankruptcy matched by its theoretical inadequacies– communitarianism would appear to represent the best we can hope for by way of an "ethic of respect".[18] In the context of health care, more specifically, communitarianism allows us to recognise and to make sense of centrally important conceptions and claims which remain all too often invisible, or if visible then unintelligible, on the liberal model. Consider, for example, patients' responsibilities to health care workers, who are fellow citizens and not just unattached individuals who happen to make their living as health workers; the importance of public health measures such as anti-smoking campaigns; the centrality of economic conditions in determining the relative health of a population; or the need for a system of taxation which would allow health care and its provision to be organised on the basis of "to each according to their needs, from each according to their ability to pay"–just because neither "I" nor what is "mine" are fully circumscribed by "me" understood as an unattached, free-floating individual.

With reference to the provision of organs for transplant, a communitarian conception of medical need would emphasize the social identity and responsibilities of potential donors–as having in the past benefited from having been able to be a "patient", for instance, itself something strictly impossible on a liberal model, which permits only the category of "client" or "customer". To the extent that one did not cease altogether to be a member of one's community after death, since communities are characteristically trans-generational entities,[3] one would also not cease altogether to be bound to one's community and thus to the needs of its members. One's body, while not the property of the community (not all ties being ties of ownership, as on the contractual model) also need not necessarily be understood as one's own property, let alone that of one's relatives. Rather, the "donation" after death of one's organs for use to help others might be simply part of one's dues to the community as a member of it, more or less comparable with paying taxes (that is to say, "donating" some of one's labour and time) or serving in the community's defence. In short, an analogue of the notion of conscription might seem applicable here. And "conscription", of course –as the term has come to be used since the French Revolution– describes a decidedly illiberal process. Where once it referred to those nominated, elected or otherwise elevated to senior government posts (for example, Roman senators) it is now used to refer to the process of depriving individuals of their autonomy in order that they may function so far as possible solely as members of a collectivity, something to which their dues as citizens require them to submit. ("The word was used in connexion with a law of the French Republic, 5 Sept. 1798, which provided that the recruits required should be compulsorily obtained from the young men between the ages of twen-

ty and twenty-five, whom it declared to be legally liable to serve in the army", *Oxford English Dictionary*).

The donation of organs for transplant, then, would appear to be something that a communitarian outlook would readily further. And this is no surprise: for communitarianism –for better or worse– is clearly stronger on duties and responsibilities than liberalism, with its overarching concern for the autonomy, the negative freedoms, of the individual.

No wonder, then, that those neo-liberals concerned to protect their positions against the social fractures which result from the imposition of that liberalism should, at least on the level of popular politics, be so enthusiastic about communitarianism. What, to take just one example, is the "Third Way" of Tony Blair's eviscerated social democracy if not an intellectually vacuous attempt to shore up the freedom of the so-called hidden hand of the market with rhetorical recourse to people's duties and responsibilities? That is one reason why communitarianism might be seen as a political excuse for liberalism rather than as a genuine alternative to it. As we shall see, it is not only its political use that suggests such an analysis, but also its epistemological basis.

It is when we turn to consider the constitution and management of waiting lists for organ transplant that these problems become more concretely apparent. Instantiating communitarianism's larger limitations, they indicate just why we should be extremely wary of any attempt to salve a liberal conscience through recourse to communitarian thinking. For what appears as amelioration of the harshness of the market turns out to be no improvement at all.

5. WHO IS "ONE OF US"?

In a situation where supply is inadequate to need, who among those in need of an organ for transplant should receive one and who not? A liberal model, with its free-market rationale, would suggest categories of people such as the following: those who can afford to pay the going rate; those whose lives are of greatest productive or financial value; those who have fulfilled, or over-fulfilled, their contractual responsibilities. In short, the management of waiting lists should be organised on the basis of the perceived importance –in terms of agreed criteria– of the individuals in need of an organ transplant. Unattractive as such a prospect is to those unpersuaded of the virtues, or indeed the freedoms, of a free market in health care, there is surely an urgent need for an alternative model. Indeed, many liberals, unwilling to carry through their liberalism to what they perceive as basic human needs, which, because basic, must remain outside the market, might –or perhaps ought to– suggest a lottery. For a lottery would at least respect their concern for equality: as such, it might, in principle, be seen as an instance of "liberalism with a human face". What this signals is a difference between, broadly, the libertarian liberalism which emanates from the USA and the more social liberalism which is the tradition of continental Europe (with the UK, in this as in so many other things, somewhere in between). But of course the harm, both direct and morality-affecting, which would result from the practicalities of such an arrangement would clearly outweigh the benefits, as John Harris' notorious "Survival Lottery" and the resulting debate illustrates.[19–24]

While a lottery might constitute a liberal solution in principle even if not in practice, it could not be a communitarian solution; for whereas the simple fact of membership of a community can for liberals constitute a necessary and sufficient condition of qualification for inclusion on a waiting list on the basis of their concern for equality (however much this concern might be in tension with their concern for freedom), this is not so for communitarians. Paradoxically perhaps, communitarianism cannot appeal simply to membership of a community, just because it cannot assume equality as a value. For equality might as a matter of fact not be among the principles governing the practices of a particular community: and who is to say that such a community was wrong? As far as communitarians are concerned, right and wrong are themselves matters for each community's decision, and not something universally discernible or applicable. And so neither equality nor anything else can be taken as a universal value. While communitarians might prefer communities which valued equality, they cannot rationally recommend them to non-members.

If, then, both wealth and chance are rejected, what might a communitarian model offer? The only solution appears to be a democratic one, at least in respect of democratic communities: ask the people who, of those in need of an organ transplant, should and who should not be included on waiting lists. Should those, such as smokers, who have been careless of their health be excluded? What of non-residents? Or "the elderly"? Or those unwilling to donate their own organs after death? And indeed, something along these general the lines has recently been pursued in certain American states, where citizens were polled on the provision of limited medical resources. This is precisely where communitarianism collapses into the same predicament in which contemporary liberalism finds itself when not prepared to justify itself on a universalist basis, when it too adopts the relativistic epis-

temology which marks the communitarian approach. Both are left with nothing more to say than that "this is how we do things here", as recently illustrated by Gaus's (1996) attempt at "justificatory" liberalism.[25] Thus Rawls's position in his *Political Liberalism,* where he goes back on the attempted (but unsuccessful) Kantian universalism of his earlier view, is at one with the North American provincialism that Rorty dresses up as all the "grounds" we can have.[26,27] The problem is that of justification: if all that can be said by way of justifying a practice is to reiterate that it is indeed a practice, then there is no escape from the *status quo,* whatever it happens to be. If non-residents or people aged over 65 are excluded from waiting lists for organ transplant, then that is that. But it isn't. We can intelligibly question not only our own criteria and procedures but also those of others. This is not just the obvious objection to varieties of relativism, whether moral, cultural or conceptual, and to the post-modernism in which it has issued–although of course it is also that. Rather, it suggests also that communitarianism, in its epistemological delimiting of intelligibility, and thus of debate, to members of the community concerned –to those who, by definition, accept the paradigms and values in question– must be inherently conservative. Liberalism, however, is at least epistemologically open to debate, just because of its universalism.

More particularly, communitarianism's difficulty is that it has nothing to say about who "we" are, about who is and who is not "one of us", about who are members of "our" community and who not. Many communitarians, such as Rorty, sincerely recommend that we extend our notion of "we" beyond the borders of our immediate community; but why follow that recommendation –since recommendation is all that it is– rather than its opposite? Why extend liberal respect to Amazonian Indians rather than restrict it to North Americans? Why not regard a narrower circle of human beings as commanding respect as persons rather then a wider one: the English rather than Europeans, say? Rorty's hopeful recommendation is no solution to liberalism's inadequacies, but simply another version of the difficulties of both approaches in theorising the nature of the individual, society and their inter-relations.[28] Communitarianism can have nothing useful to say about the management of waiting lists for organ transplant. While liberalism can in the end offer no good reason why we should consider our neighbours's needs when it is not in our self-interest to do so, communitarianism "solves" that problem at the cost of delimiting the scope of "neighbour" according to the exigencies of available resources, whether material or intellectual, and that is no sort of justification at all. The notion of a Europe as an entity made up of, but not solely constituted by, its individual members, is certainly an improvement on a Hobbesian model of "communities" each pursuing its own self-interest. But if that results in a "fortress Europe", creating "others" and identifying other people as "other" in response to the exigencies of its own material conditions then it is no improvement, just as the "community" of, say, a global employer or an underclass is no improvement on even the rootless individualism of liberalism.

6. CONCLUSION

What these brief considerations suggest is that, on the larger moral and political level, we should, after all, re-evaluate the liberal ideal of a universalist conception of humanity rather than going for the apparently easier option of a communitarianism which, in denying the possibility of foundational justification, seeks to relieve itself of the effort needed to offer any. For while liberalism's "individual" is highly problematic, its universalism is a major contribution to human well-being, conceptually no less than historically. In terms of the provision of, and the management of waiting lists for, organ transplant, then, no rational solution can be found in the absence of a clear conceptualisation of the relations between, respectively, society and its members, or between individuals; in the absence of a clear answer to the question, "Who is my neighbour?" Meanwhile, a policy of opting in as regards provision and of no exclusion plus luck of the draw –an informal lottery, in effect– as regards potential recipients might well be the best we can manage. For just as we do not stop to make judgements about climbers' wisdom in failing to take adequate account of forecast weather conditions or smokers' failure to stop killing themselves before we treat as well as we can those who need treatment, with all the admitted unfairness to others which that entails, so we have no good grounds on which to restrict admission to transplant waiting lists on cultural, geographical or social bases. To take into account and attempt to resolve such unfairness would, in the absence of an adequate and agreed notion of unfairness, constitute or result not only in clear and direct harms, but in disconcertingly morality-affecting harms. In short, we would be promoting the notion of the deserving and undeserving ill, just as both classical liberals and today's communitarians are propagating that of the deserving and the undeserving poor: and that is a more dangerous prospect even that what is, at its worst, manifest unfairness randomly distributed.

ACKNOWLEDGEMENTS

Earlier versions of this paper were presented at an ORGANEED workshop organised by the Centre for Professional Ethics, University of Central Lancashire; the University of Brighton Philosophy Society; and a Research Seminar at the Centre for Practical Philosophy, University of Middlesex. I am grateful both to all the organisers concerned and to participants for their helpful comments.

ΠΕΡΙΛΗΨΗ

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B. BRECHER

School of Historical and Critical Studies, University of Brighton, UK

Αρχεία Ελληνικής Ιατρικής 1999, 16(6):609–614

Συζητούνται εκ παραλλήλου αφενός η διαχείριση της λίστας αναμονής των υποψηφίων για μεταμόσχευση συμπαγών οργάνων και αφετέρου τα φιλελεύθερα και τα κοινωνισμικά (communitarian) μοντέλα Φροντίδας Υγείας, με την ελπίδα ότι η συζήτηση για το ένα θέμα θα φωτίσει το άλλο. Μετά από μια σύντομη περιγραφή του φιλελευθερισμού και του κοινωνισμού, καθώς και του τρόπου με τον οποίο οι δύο αντιλήψεις μπορούν να εφαρμοστούν στη Φροντίδα Υγείας, ακολουθεί μια φιλοσοφική συζήτηση, που κατατείνει στο συμπέρασμα ότι, αν δεν θέλουμε να αναλωθούμε στην υπεράσπιση του status quo που ισχύει στα θέματα της ιατρικής και της κοινωνικής πολιτικής, είναι καλύτερο να απορρίψουμε την παγκοσμιότητα της φιλελεύθερης παράδοσης.

Λέξεις ευρετηρίου: Ιατρικές ανάγκες, Κοινωνισμός, Μεταμόσχευση, Φιλελευθερισμός

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Corresponding author:

B. Brecher, Shacs, University of Brighton, 10–11 Pavilion Parade, Brighton BN2 1RA, UK