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# Introduction

Issues in health ethics or medical ethics or so-called bioethics are very often considered in abstraction from the social and political context in which they arise. But it is obvious that making decisions about those issues will differ quite radically in a liberal democratic society as compared with any kind of non-liberal society, whether it be theocratic or authoritarian (the term is used in a neutral sense) or paternalistic or 'traditional'. In a liberal society personal autonomy, the right to choose one's own way of life for oneself, is the supreme value. Certain consequences follow from the primacy given to personal autonomy in the liberal society. First, there is in such a society a sharp disjunction between the sphere of personal morality and the sphere of the law. The law is not concerned with matters of personal morality and the 'enforcement of morals'. Second, the liberal society is characterised by ethical pluralism, which allows a wide variety of ethical and religious (and non-religious) positions to be held by its members. Third, apart from the commitment to the primacy of personal autonomy, there is no determinate social consensus about a set of 'core values' or a 'public morality' which it is the law's business to safeguard and promote.

One might expect that in a liberal society the value of personal autonomy would be central in ethical discussions about new

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procreative technologies and modes of family formation; the limits of medical treatment and whether or not there is a 'right to die'; genetic intervention in human life; and so on. One might expect also that a clear distinction would be made between the morality of such issues and their legality: that is, whether or not the law should intervene to forbid them or control them. Again, one would think that ethical pluralism, particularly in the field of reproductive technology, would be not merely tolerated but positively welcomed and encouraged. However, what we find in fact is that many ethical positions proposed in this area are often in conflict with the values that are the heart of the liberal society.

Over many years I have served on a number of committees concerned with medical ethics and bioethical issues, and I have often been astonished by the way some committee members on occasion adopt quite authoritarian and paternalistic positions wholly at odds with the values of the liberal society of which they are a part. Under the guise of ensuring the 'common good' or defending 'public policy' or a set of 'core values' without which, it is claimed, civilised society will collapse, they are quite prepared, in the most authoritarian way, to tell people what is good for them and to lay down prohibitions about what they may and may not do with their lives. When one remonstrates with them that we are supposed to be living in a liberal society where individual autonomy and personal liberty are the central values, these people usually reply that liberty is one thing but licence is another and that 'libertarianism' should not be confused with true liberalism!

St Augustine remarks in his *Confessions* that in his unregenerate youth he prayed to God, 'Give me chastity, but not yet'. In much the same way many people in our society say in effect: 'Give me liberty, but not too much'. They acknowledge the values of the liberal society but they are unwilling to pursue them seriously and consistently, and to press them to their logical conclusions. As a nineteenth century thinker once said: such people think

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that moral principles can be summoned up and dismissed very much as we summon up and dismiss a hansom cab.

This is, alas, especially the case with some Christians who seem to think that they have a right to use the law to enforce Christian morality on divorce, abortion, contraception, assisted procreation, suicide and so on. I am myself a Christian and I have always thought that, while upholding their own moral values, Christians should also be especially concerned to uphold the value of personal autonomy. There has been a long tradition of Christian theological thought (more honoured, perhaps, in the breach than in the observance) which emphasises the primacy of the individual 'conscience'. St Thomas Aquinas says, for example, that it is a sin to go against the dictates of one's conscience. Again, it has always been a tenet of traditional Christianity that it is a sin to coerce non-Christians into the Christian Church, and one may legitimately infer that it is similarly against Christian faith to use the law to coerce non-believers in respect of moral matters.

The Catholic Church, of course, claims that its opposition to abortion, contraception, assisted procreation and the like is based not on specifically religious grounds but on the 'natural law' which is accessible to everyone regardless of his or her religion. But the natural law theory of ethics is one theory among a number of competing philosophical theories of ethics and it must take its chance, so to speak, among them. It represents one ethical position among the plurality of ethical positions that characterises the liberal society and it cannot claim any special or privileged place or status. In any case, there are widely differing interpretations, even among supporters of the theory, as to what the natural law recommends or forbids.

Whilst the view of the supremacy of conscience and personal liberty just mentioned has always been implicit in Christian moral theology, the tragedy has been that until very recently it has not been fully exploited by Christian thinkers. Nietzsche says somewhere that if Christians are redeemed they ought to look

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rather more as though they were redeemed! In much the same way, if, as Christians claim, the truth has really made them free, they ought to start behaving as though they were lovers of freedom.

Some think, mistakenly, that liberalism involves some kind of ethical relativism or scepticism, which would mean that no one ethical or moral position was better than any other. But liberalism is not based on ethical relativism or scepticism and it does not deny that people may espouse positions which are, objectively speaking, morally right. What is of the essence of liberalism is the moral conviction that, because they are autonomous moral agents or persons, people must as far as possible be free to choose for themselves, even if their choices are, objectively speaking, mistaken; and further that the state may not impose one moral or religious position on the whole community but, so long as they do not violate or harm the personal autonomy of others, must treat all such positions equally. As one of the contemporary champions of the liberal ideal, Ronald Dworkin, says: liberalism 'cannot be based on scepticism. Its constitutive morality provides that human beings must be treated as equals by their government, not because there is no right or wrong in political morality, but because that is what is right'.<sup>1</sup>

Christians then, or anyone else for that matter, may quite properly maintain and promote their own moral position on the issues to be discussed here, but if they are citizens of a liberal society they will not merely tolerate but respect the conscientious right of their fellow citizens to hold contrary moral positions, and they will not seek to have their own views imposed by the state. The same point has been nicely made by an eminent American moral theologian, Richard A. McCormick SJ. A Christian ethicist working in the area of public policy, he says, 'should bring his/her convictions to the public table — even those nourished by religious faith — but also his/her sense of realism. For me, that realism means that my moral convictions are inherently intelligible. But it also means the willingness to acknowledge at some point that others may not think so'.<sup>2</sup> The

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notion of the liberal society proposed in this book is, it goes without saying, controversial in that, first, there are different and competing versions of the liberal ideal and, second, there have been radical criticisms of it by some contemporary thinkers. However, while I cannot enter into a detailed defence of my version of the liberal ideal, I believe that a defence can be given.<sup>3</sup> My version is, as will be apparent, an 'ideal type' and I do not claim that any particular society actually exemplifies or embodies that ideal. At the same time I believe that my view of the liberal society represents the essential features of that new conception of society that began in the eighteenth century with Kant and others, was later developed by Mill and other nineteenth century thinkers, and was further elaborated by contemporary liberal thinkers such as John Rawls, Isaiah Berlin, Ronald Dworkin and Joseph Raz.

In parenthesis, I might mention that the idea of the liberal society put forward in this book is not necessarily linked with the idea of limited or minimal government intervention (a night-watchman state) nor with economic *laissez faire*. In my view the government in a liberal society has an obligation not merely to prevent, in a negative way, restrictions on the exercise of personal autonomy, but actively and positively to promote the socio-economic conditions within which personal freedom and autonomy can flourish. People cannot act in an authentically free and autonomous way if they live in dire poverty or in conditions of social anarchy, or if they do not have basic education and do not enjoy basic health. Equally, they cannot be autonomous agents if they do not have the opportunity to make real choices.

To forestall a possible objection: this does not mean that the state is involved in playing a moral role in the sense that it is promoting, and enforcing, one specific kind of morality. For the state to promote conditions of personal autonomy, so that people are able to choose freely their own styles of life, is not the same as coercing people to be moral in a specific way.

I am principally concerned here with the set of ethical issues

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that have come up in the sphere of health generally, medicine more specifically and biotechnology even more particularly, within a liberal democratic (and ethically pluralistic) society, and with the ways in which the community in such a society can face up to those issues. In order to keep the discussion within manageable bounds I have focussed on a relatively limited set of medical-ethical and bioethical issues. First, I discuss questions about the ending or termination of human life (usually placed under the misleading rubric of 'euthanasia'). Second, I consider the issues concerned with the new and alternative ways of assisted reproduction and family formation, and finally with the complex set of ethical questions involved in the distribution of health-care resources. Each of those areas involves a number of other subsidiary issues, from the meaning of 'the quality of human life' to the right of women to control their reproductive capacities, to the adequacy of utilitarian approaches in health-care resource allocation.

The idea of personal autonomy, with all its connotations, plays a central part in the analysis of those issues and I hope to show how important and how powerful that concept is in bioethical discussion. No doubt a complete ethics cannot be generated from the idea of autonomy: nonetheless a great deal of ethical capital can be extracted from it. In recent US medical ethics the concept of autonomy has, to some extent, fallen out of favour and been subjected to sharp criticism because it has been linked with an excessively individualistic and self-regarding position. However, I argue that an emphasis on personal autonomy can go together with an altruistic concern for others and with a recognition of community values. A person may very well make a conscientious and autonomous moral decision about her or his responsibilities and obligations towards others. Of course, the concept of autonomy may be used by some people in the service of an ideology of atomistic individualism, but there is no necessary connection between the two.

A further point: although Mill and some other supporters of the liberal ideal purport to justify it in utilitarian terms — the

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principle of individual liberty leads to the most beneficial social consequences — there is no essential link between the liberal ideal and the theory of utilitarianism. In fact, personal autonomy is an ‘absolute’ value or intrinsic good regardless of any consequences it may have, and it is for that reason that a utilitarian justification is inadequate.

After an introductory chapter, in chapter 2 the ethical values presupposed by a liberal society are discussed. The primacy of personal autonomy is analysed, as are its consequences — anti-paternalism, the distinction between the sphere of law and the sphere of personal morality, ethical pluralism and what a moral ‘consensus’ means in a society of autonomous agents. Recent criticisms of the liberal ideal are considered and a reply in defence of liberal values is given. Finally, the relevance of those values for contemporary bioethical issues is discussed.

In chapter 3 the following questions are posed. Can we choose, in the name of autonomy, to die when we judge that our continued survival is humanly pointless or that the quality of our future life is likely to be zero? Can we refuse medical treatment to, or withdraw treatment from, patients when their future quality of life is likely to be minimal? This involves a discussion of whether we can impute ‘consent’ to incompetent patients (disabled newborn children, the comatose, those in persistent vegetative states and so on) who are incapable of giving consent to withdrawal of treatment. Again, the notion of quality of life is an ambiguous one. Some speak as though a person’s quality of life can be measured objectively and even quantified. As against this I argue that quality of life can be defined only by reference to the notion of personal autonomy. The question we have to ask is: will the person in question be able to exercise some minimal degree of autonomous control over his or her life if treatment is successful?

In the following chapter the different modes of birth and family formation made possible by new reproductive technologies are considered, as is the ‘right to procreative liberty’. By way of example, an extensive analysis and discussion of

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surrogacy arrangements is provided. Once again, if the principle of autonomy is to be employed consistently, women should be allowed, in certain circumstances, to be surrogate mothers if they freely choose to do so. The various criticisms of these technologies are discussed and particular attention is given to certain feminist thinkers (for example Corea and Rowland) who claim that the new forms of assisted procreation do not enhance women's autonomy but lead to their oppression. I argue that the feminist principle that women have the right to control their own bodies (a form of the principle of autonomy) applies here in the same way that it applies with regard to abortifacient and contraceptive technologies. One cannot logically use the principle with regard to the latter technologies and then reject it with regard to reproductive technologies.

In chapter 5 I discuss the ethical dimensions of the present debate over the distribution of scarce health-care resources. The debate has been dominated by utilitarian approaches and I attempt to show how inadequate they are with respect to the justice or fairness of health-care resource allocation. Again, utilitarian, economic rationalist and cost-benefit oriented models tend to be *dirigiste* and paternalistic, and neglect both patient autonomy and the professional autonomy of physicians and health-care workers. So called 'community consultation' (as in the Oregon scheme described in chapter 5) is limited to establishing and ranking health-care priorities on a cost-benefit basis. Patient choices are not enhanced or enlarged but are in fact severely restricted in the name of cost-benefit efficiency. I argue that in a liberal society the enhancement of patient choice and control of medical resources, and of professional autonomy, should be major goals of any allocation or distribution scheme. This approach sets severe limits to 'rational' planning in this area and indicates the need for a 'piecemeal social engineering' strategy which will respect the values associated with autonomy.

In a final chapter I consider the liberal ideal as against the realities of current medical-ethical and bioethical discussion and practice, and also whether any kind of consensus about



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bioethical and medical–ethical questions is possible in a liberal, ethically pluralistic, multicultural society of autonomous individuals.

NOTES

1. Ronald Dworkin, *Law's Empire*, Cambridge, Mass., Harvard University Press, 1986, p.441.
2. Richard A. McCormick, *The Critical Calling: Reflections on Moral Dilemmas since Vatican II*, Washington, Georgetown University Press, 1989.
3. See, for example, Joseph Raz, *The Morality of Freedom*, Oxford, Clarendon Press, 1980.

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## Autonomy and the Liberal Ideal

### The idea of autonomy

The idea of autonomy is a blindingly obvious one. It simply means that if I am to act in an ethical or moral way I must choose for myself what I am going to do. I may of course take advice from others and I may be subject to persuasion and pressure from external sources, but when the chips are down I must decide and choose for myself. Only then is what I have done imputable to me so that it is *my* act, and only then am I responsible for it and praiseworthy or blameworthy for it.<sup>1</sup> As a contemporary thinker has put it:

While we may be mistaken in our beliefs about value, it doesn't follow that someone else, who has reason to believe a mistake has been made, can come along and improve my life by leading it for me, in accordance with the correct account of value. On the contrary, no life goes better by being led from the outside according to values the person doesn't endorse. My life only goes better if I'm leading it from the inside, according to my beliefs about value. Praying to God may be a valuable activity, but you have to believe that it's a worthwhile thing to do — that it has some worthwhile point and purpose. You can coerce someone into going to church and making the right physical movements, but you won't make someone's life better that way. It won't work, even if the coerced