

To the Graduate Council:

I am submitting herewith a dissertation written by Mark A. Yarborough entitled "Society, Individuals, and Non-Therapeutic Medical Research." I have examined the final copy of this dissertation for form and content and recommend that it be accepted in partial fulfillment of the requirements for the degree of Doctor of Philosophy, with a major in Philosophy.

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SOCIETY, INDIVIDUALS, AND NON-THERAPEUTIC
MEDICAL RESEARCH

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time by producing a dissertation of sufficient quality that she can be happy to be a part. If so, her work and patience will have been worthwhile in my view, and I hope in hers as well.

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ABSTRACT

This study attempts to establish the claim that persons have an obligation to participate in some types of non-therapeutic research. I arrive at this conclusion because I view individuals as the products of a collective agent, i.e., society, which is duty bound to provide persons with the opportunity for achieving individuality, which I argue is the chief human good. Hence, society must provide certain goods to its members. I argue that the opportunity for or enhancement of health is one of those goods. It follows that medical science must attempt to establish new treatments and cures, if possible. Individuals have a duty to assist the medical profession in this venture since individuals have a duty to be beneficent at times. I show that non-therapeutic research falls under this duty at times because of: 1) the benefit it provides, and 2) it does not interfere with the legitimate interests and rights of the research subjects.

After establishing this position I consider two different positions. Both Hans Jonas and Paul Ramsey argue that there is no obligation to participate in non-therapeutic research. I argue that they arrive at this conclusion given their presuppositions about the nature of personhood. I argue that they treat the notion of personhood in a nominalistic, individualistic manner which does not capture the full picture and impact of personhood. Since their metaphysical

understandings of persons are inadequate they are led to give wrong moral judgments concerning the legitimate use of persons by society.

Finally, I examine the issue of drafting research subjects for non-therapeutic research. I conclude that it can be morally justified in extreme situations. But I also suggest that there may be good countervailing reasons for not instituting such a draft.

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INTRODUCTION

Medical experimentation has a long, and in many respects ignoble, tradition. In the third century B.C. physicians dissected living persons for experimental purposes,¹ a cruel practice for physicians to be engaged in no doubt. But the twentieth century A.D. has seen this butchery matched, indeed surpassed, by practicing physicians. Inmates of Nazi concentration camps were forced to participate in bizarre, macabre, and often fatal medical experiments.² These experiments ranged from injecting subjects with typhus to exposure in the cold to see at what temperature a person freezes to death. Bones were broken and then surgically set only to be broken and surgically "repaired" again.³ These atrocities, as I said, were the work of Nazis. Thus, they are exceptional, no? Yes and no. They have yet to be repeated on such a large scale. But American physicians have succeeded in matching their lack of respect for the personhood of research subjects. For forty years, from 1932-1972, government sponsored physicians studied hundreds of black males diagnosed as having

¹Gert H. Brieger, "History of Medical Experimentation," Encyclopedia of Bioethics, 1978, 2, 684.

²F. C. Redlich, "Medical Ethics Under National Socialism," Encyclopedia of Bioethics, 1978, 3, 1018.

³Konnilyn G. Feig, Hitler's Death Camps: The Sanity of Madness (New York: Holmes and Meier Publishers, 1979).

syphilis.⁴ But they did not study ways to treat the disease. Instead they simply studied the effect and natural progression of the disease when left untreated, which sometimes proved to be death. Such behavior on the part of trained, licensed professionals is both shocking and inexcusable. But all this was done for a "good" cause, viz., progress and science. Surely the public at large is entitled to be less than enthusiastic about supporting human experimentation for the sake of progress when these atrocities are considered.

To add to this anti-experimentation sentiment shared by many, there is the rise in individualism which has been taking place in the last few decades. The rights of the individual have become increasingly broad and thus increasingly important in the analysis of social practices and institutions. With respect to the institution of medicine, to which this study will be confined, the landmark decision of "Canterbury vs. Spence"⁵ best embodies the role and influence of individualism. The ruling contends that the right to self-determination entails the patient's right to determine what is done to, with, and for his body. The individual

⁴See Jim Jones' Bad Blood: The Tuskegee Syphilis Experiment (New York: Free Press, 1981), for the definitive study of this research trial.

⁵Judge Spotswood W. Robinson III, "Opinion in Canterbury vs. Spence" in Biomedical Ethics, eds. Thomas Mappes and Jane Zembaty (New York: McGraw-Hill, 1981), pp. 78-83.

should be in control, not the health care professional. The Belmont Report of the National Commission for the Protection of Human Subjects also stresses the patient's right to self-determination.

I will not argue with the wisdom of this principle. What I will argue with are the excesses of individualism. By stressing the concrete particularity of persons, the overall dimensions of personhood are lost. Modern analytic moral philosophy has distorted the meaning and nature of personhood. It has begun with the simple and obvious observation that persons are physically distinct from one another. Then it has gone from there to the false assumption that persons are morally distinct and self-contained as well. This, in turn, has led to the judgment that the pseudo-isolation should not be violated or even used for the benefit of others. With respect to the issue of human-experimentation, Hans Jonas⁶ and Paul Ramsey⁷ best express the sentiment of individualism. Both have enveloped the person in a cocoon of rights that proves to be virtually impenetrable from the outside.

Jonas argues the the use of individuals in non-therapeutic medical experimentation is justified only if we

⁶Hans Jonas, "Philosophical Reflections on Experimenting with Human Subjects," in Daedalus, Spring 1969, pp. 219-247.

⁷Paul Ramsey, The Patient as Person (New Haven: Yale University Press, 1970).

respect and protect the wrong-headed individualism-isolationism of persons. Ramsey similarly contends that participation in medical research is supererogatory and thus nonbinding.

Of course, Jonas and Ramsey are not the only writers on the moral problems of medical experimentation. Ever since the Nazi atrocities were revealed at the Nuremberg trials, much critical discussion has ensued. In 1948 "The Nuremberg Code of Ethics in Medical Research" was developed. The Nuremberg Code established several guidelines to be followed in order to insure that human research duly protects and respects the subjects of research. Later, in 1964, the World Medical Association adopted an even more extensive set of guidelines concerning medical experimentation, "The Declaration of Helsinki." But neither of these codes had the force of law behind them. Finally, protection of human subjects did come to the attention of lawmakers. In 1974, Public Law 93-348 was enacted. This law established a National Commission, previously mentioned, to develop ethical guidelines for conducting human research. Passage of the law by no means quieted the debate. In fact, from May of 1975 through June of 1983 the Joseph and Rose Kennedy Institute of Ethics has acquired some two hundred and ninety-nine titles dealing with the moral issues of human experimentation. Thus, the topic of this study has received much previous and important debate. In no way will I be able to

do justice to the vast literature on the subject in general. Consequently, I will deal only with two of the well-established and well-reasoned positions contrary to the position I will argue for in this study. That is why I singled out Jonas and Ramsey.

In the course of this study I will argue that the views of Jonas and Ramsey are mistaken. Participation in some forms of non-therapeutic medical research (to be specified in Chapter Four) is obligatory, not supererogatory. In the course of the argument I will show that both the welfare of the person-subject and the benefit of the research are both moral factors which must be considered in evaluating the issue at hand.

So my approach will have a view to consequences. For all the past abuses of medical research there are past successes as well. Thus, I am a firm defender of the moral import of medical progress. Its import comes from the contribution it makes to the chief human good. The chief human good, and the key concept to this study, is individuality. I shall argue that one's ability to shape and define oneself in a social context by use of rational free agency is what is uniquely human. If one is given the opportunity to develop and use this agency one can achieve individuality. This achievement ought to be a reality in our society, I will argue, and medical experimentation can, at times, help provide the opportunity. Thus, persons are under

a general obligation to participate in some forms of non-therapeutic experimentation.

In order to prove that individualistic deontological moral thinkers like Jonas and Ramsey are wrong in their evaluation of the issue at hand, I must first show that their underlying assumptions of personhood are mistaken. This will necessitate that the first chapter be devoted to a very broad topic, viz., personhood and the relationship of the individual to society. Jonas and Ramsey contend that obligating persons to participate in non-therapeutic research is wrong. It is a violation, for various reasons, of the individual. Once we examine the nature of personhood apart from the specific issue at hand we will see that personhood is a social attribute, indeed, a social phenomenon. I shall argue in Chapter One that a person is a product of society. Persons are self-conscious and self-directive yet society is what is fundamentally real. Society is epistemologically prior to persons.

So, in Chapter One I shall explain what society and persons are--a metaphysical analysis. In Chapter Two I will explain what society and persons ought to do. Thus, I shall discuss ethical theory and the moral principles that follow from the metaphysical claims of Chapter One. I will endorse a teleological approach to ethics which seeks individuality as an end. I do not take a strict utilitarian approach to ethics, even though most of my conclusions are compatible

with utilitarianism. Briefly put, my argument in Chapter Two will be that moral rules or duties should be understood as functional, instrumental tools used to accomplish the goal(s) society sets for itself. Since individuality (as explained in Chapter Two) is the goal of society, rules are established to make individuality a genuine possibility for persons. I emphasize the nature of moral rules more than their content, however. It is not the purpose of this study to give an exhaustive system of ethics based on individuality. Rather, my topic is limited to establishing an obligation to participate in some non-therapeutic research. Thus, I need only lay sufficient groundwork for this immediate task.

Having explained what I take to be the proper methodological and normative approach to ethics, I shall turn in Chapter Three to the last preliminary discussion. Establishing an obligation to participate in some non-therapeutic research involves the use of persons by an institution, viz., medical science. Chapter One will explain the nature of personhood. Chapter Two will explore the proper respect we should show for persons. And Chapter Three will examine the institution of medicine to see how it relates professionally to persons. I will show that contemporary medicine involves the use of persons in both teaching and research. Hence, medicine by its very nature is a user as well as a treater of persons. This is an important point to keep in

mind if the reader is to understand adequately all the components of the issue at hand, viz., the research subjects, i.e., persons; the researcher, i.e., medicine; and the beneficiary, i.e., society.

So the first three chapters will deal with important preliminary factors. In Chapter Four the argument establishing an obligation to participate in some types of non-therapeutic research will finally be presented. I shall argue that health stands to make a contribution to persons' capacities for achieving individuality. In Chapter Two the point will be made that society ought to provide to persons the opportunity for achieving individuality. Thus, I will show that health care is, at times, one of those things that society is expected to attempt to provide to persons. Since experimentation makes a contribution to health care (Chapter Three), society is required to perform certain types of research. The types required are those that promise benefit yet do not disrespect the subjects' capacities for individuality. Thus, I argue that persons are obligated to make themselves available for use, not abuse, by researchers. In this manner society is able to do what is demanded by the goal of individuality.

In Chapter Five I will directly address the contrary views of Jonas and Ramsey on the basis of the preliminary work done in Chapters One through Three. I will point out that their views are mistaken in large part because they

inadequately understand the nature of personhood and the degree of isolation that persons should be allowed. Since they suffer a philosophical misunderstanding about the nature of personhood their moral reasoning about experimentation is adversely affected. But of course I cannot demonstrate this unless my readers follow my excursion into the fundamental, abstract issues addressed in the first three chapters.

The reader will discover that this study covers a very broad spectrum. I move from the theoretical end of the spectrum to the practical, applied end. The main focus is applied ethics, but that focus cannot be articulated absent a firm, philosophically sophisticated foundation. Of course, my discussions in the first three chapters are not exhaustive. But neither are they superficial. And if the reader seriously participates in the dialogue of those early chapters she should be able to adequately think and rethink the nature of applied ethics in general even if she does not share the sentiments and/or the conclusions of this writer.

As a final note I shall deal briefly with the topic of drafting medical research subjects. I argue that such a draft is justifiable in the terms of utilitarianism, Kantianism, and individuality. But I argue that the need for such a draft is very unlikely. Also, I contend that such a draft is probably legally and politically unwise even if it is morally justifiable.

Last, but not least, it is the hope of this writer that readers will find this philosophical work to be at least academically competent. That much will satisfy the writer. If readers learn from the study the writer will feel rewarded and even happy.

CHAPTER I

SOCIETY AND THE INDIVIDUAL

What is a Person?

The first task facing us is to answer the question: What does it mean to be an individual, a person? This question must be answered first because when we consider whether or not there is an obligation for persons to participate in non-therapeutic research, we are considering doing some act (research) to some thing (person). Well, then, we must be clear what exactly this "person" is like to which we want to do something. Where does it fit in the universe? Is it closer to a basketball or an angel? If a person is a "mere object" like a basketball, then we can do pretty much as we please. If, on the other hand, a person is likened to an angel, then we risk treading on hallowed ground. So, obviously we must first know what a person is. More specifically, for our task we must understand the moral implications of the concept of a person. We will be considering the scope of the obligations of persons. Only moral agents have obligations. Hence, we can restrict our inquiry accordingly.

It might seem absurd, at first glance, to ask seriously what a person is. After all, we all are one; but, even though we obviously are all persons, it is not at all obvious exactly what a person is. Where do we start, then?

We start with we, that which I share in common with you, the reader, and all others. We belong to the species Homo Sapiens. Further, we (at least those of us we are concerned with) live in a community, a society. We all live within society. Since we all share this in common (and since I am convinced this is crucial to the concept of a person), it will be useful to understand society so we can better understand persons.

Individuals and Society

Some may balk at my shift of inquiry here. A person, after all, is an individual, and a society is a group of individuals. And we want to understand the member, not the group. I agree that it is the member we wish adequately to understand. But one must keep in mind that we are dealing with individuals who fall under the moral category of personhood. And such individuals are all members of a society.

This fact, i.e., persons are all members of a society, is obvious when we ask ourselves what a moral agent is. Moral agents are understood with regard to moral values or morality. Morality pertains to obligations, interests, rights, responsibilities, etc. And all of these assume more than one person. We all know that rights have corresponding duties. Hence, a right reflects a relationship between at least two agents. If I have right A, then someone has duty B to provide me with right A. Hence, rights necessarily

make reference to others.¹ They do not refer only to the individual who enjoys them. They point outside the agent to other agents.

Further, obligations and responsibilities necessarily make reference to others. Consider a general obligation to develop one's talents. Initially, one thinks a talent is a possession of the self or individual--which it is to a great extent, but not entirely. For example, if I have a talent for playing the bassoon, that may be something I do and enjoy whether or not others are around to hear it. Robinson Crusoe can make and enjoy music for himself alone. The issue, though, is the obligation to make music, develop physical strength, intellectual skills, etc. Does Robinson Crusoe have these obligations? Surely he stands to benefit from them, but this is not to say he is obligated to do so.

¹Some may claim that a person does have rights absent the existence of other persons. For example, the first or last person on earth would have the right to kill animals for food. If such a person wanted to live he or she probably would have to kill animals. But what does it mean to say that the person has a right to kill? What is the basis or foundation of that right? Does nature grant the right? That response is fallacious. It is a hypostatization. If there were a God, it could serve as the source of the right. Thus, the agent would not be sinning to kill for food. But this response establishes a community between God and the person. By giving the person a right, God is compelled to evaluate the person's actions accordingly. Presumably, the survivor could grant himself the right to kill for food. But why would the survivor need to hold himself accountable for his own actions? If the survivor did feel accountable, I think it would reflect that he is positing the existence of his former community of moral agents, or the hypothetical existence of some other community. Absent a community, there are no rights.

Strictly speaking, Robinson does only those things he chooses to do. Obligations and responsibilities make implicit assumptions about the existence of others. To say that one has an obligation is to assert that one has or is supposed to do something for the sake of others. It asserts that it is not solely a matter of individual choice but a matter of others choosing for the individual, of others making demands upon the individual. If I have an obligation to increase my intellectual skills, it reflects the fact that others stand to benefit from my increased skills just as I stand to benefit from them. Further, these others have an interest in benefiting from my increased skills. In order to protect their interests, they obligate me to provide for them, i.e., they make demands upon me to act with regard to their interests as well as my own. I, in turn, make similar demands on them. It is the existence of others with interests that gives rise to obligations and responsibilities. If there were no others, there would be no obligation. Robinson Crusoe could still decide to play the bassoon, develop his skills, and write poetry. However, he would have no obligation to do so because no one else would be present to obligate him. Thus, the whole institution of morality presupposes a society. If there were no society, there would be no morality. So, when we want adequately to understand what a moral person is, we must have a working knowledge of what society means, of what it is.

What is Society?

Let us turn, then, to the question: What is society? The answer is easily stated. It is a collective, conscious, active process² which aims at individuality. In the next few pages, I hope to explain exactly what this definition means. But I should also make explicit here in the beginning some of the key claims the definition entails. First of all, society is seen as a teleological process. Further, this process entails an ontology which views everything, all objects and concepts alike, as historical and, as such, possessing a history of change. In other words, man's universe (society) is not static; it is dynamic. The key to understanding society is to understand the process of change. So I am called on to give a description of how society works. In fact, I want to argue that society is how it works.

Now let me begin to support my definition of society as a collective process striving for individuality. This is initially a bit foreboding I am sure, yet any definition of society could surely be so. After all, defining society is a bit like defining nature.³ It is that of which we are all

²In the following pages I borrow much with regard to society from Dwight Van de Vate, Jr., Romantic Love: A Philosophical Inquiry (University Park: Pennsylvania State University Press, 1981).

³Dwight Van De Vate, Jr. made this point in conversation to me.

a part, with which we are all intimately familiar. But to proceed past this initial, familiar first step is extremely difficult. Common sense would tell us to explain society by pointing at everything that makes up society. But if we were to begin to point to this and that, to ceaselessly quantify everything, even if it were possible, common sense would probably overlook one key thing, viz., the activity of quantification itself.⁴ After all, there would be nothing quantified if there were no process of quantification.

Object and Existence

What I am really saying here is that objects do not exist until they are named. Please note that I say objects and not matter "in itself" or being. These may have independent existence. The objects in our world, though, are necessarily contingent upon our construal of them. And this naming of objects is a function of society just as the striving for individuality is a function of society. (My language here literally implies there is a "society" apart from its function or activities. I do not mean to imply this.)

When I say that objects do not exist until they are named, I do not mean that this paper does not exist until I call it a sheet of paper. The object or concept "paper"

⁴Dwight Van de Vate, Jr. made this point in conversation to me.

surely precedes my existence in the world or in society. I encounter "paper" in infancy and as I learn to use language I learn what paper really is. This suggests that objects have both a history and existence of their own, independent of mine or anyone else's individual volition.⁵ However, "paper" would not exist prior to the time a collective classification "paper" was made. As I said, objects in our world are necessarily contingent upon our collective construal of them. So, paper can have an independent existence apart from me, but not apart from us, or apart from society. The same is true for all objects.

Another way to express this contingency shared by all objects is to state that they are human creations, creations of human consciousness. Yet these creations have a history and order to them. Peter Berger and Thomas Luckmann explain how objects are created in this manner (i.e., with a history and order) in their book The Social Construction of Reality. Given their history and order, objects are out there in the world apart from me. So their existence does not and cannot be justified in terms of me and my desires, intentions, volitions, etc. But since their existence is contingent, their existence must be explained in relation to something.

⁵I am assuming there is no God or volitional Nature that ultimately explains our world. Rather, I have a purely secular approach.

Their existence must be explained in relation to society⁶ since the individual alone cannot be responsible.

When one says that objects have a contingent existence since they presuppose a collective consciousness, it does not follow that society is non-contingent. This consciousness exists only in relation to the possibility of objects, i.e., matter, and the presence of individual consciousness. In other words, society must be embodied (I will speak of the necessity of the body later in the chapter). To be embodied means that society consists, at least partially, of spatial relations. These relations are not necessary. Society can cease to exist. So, everything is contingent, including society. Yet, society is the most important element in this contingency. It is society that determines what the different elements are, as will be explained in the following pages.

Society as Agent

It follows that society must have a volition or desire or purpose or reason for creating the world in the manner that it was created. I do not mean here that society is the causal agent of each particular event. Rather, I mean that society is the agent that makes particular events understandable. If something is understood it is perceived

⁶cf. Peter L. Berger and Thomas Luckmann, The Social Construction of Reality: A Treatise in the Sociology of Knowledge (New York: Anchor Books, 1967).

in relation to other things. It is seen as a part of a system or whole. Understanding presupposes such a systematic order by which evaluation is made possible.

When I say that evaluation is possible because society acts out of purpose I do not mean that each event is the result of a volitional act of society. John does not hit Paul because society determines it to be so. But the fact that we can explain, i.e., evaluate, phenomena indicates that there is some system that a particular event occurs within and in light of which it is understandable. This whole (reality) is a product of society. Society is a producer, if you will, and thus volitional or purposive.

No sane person would deny that there is a whole, ordered, and pre-existing world out there in which we all live. Discounting all but secular explanations for its existence, we must be able to discover some cause or causal agency responsible for its existence. Otherwise, explanation will not be possible. Since explanation is possible, there must be a reason behind its possibility. And society is the reason; it is the author; it is the volition and creation "beneath" or "behind" the world.⁷ I am defining society much like an agent, an "intelligent, purposeful

⁷I do not mean to exclude characteristics of nature, e.g., gravity, from a causal role. This is certainly part of the framework society must work within. But, it is society, and not nature or gravity, that has the final word.

collective activity, something suspiciously like a moral agent, a knowing and acting subject."⁸

The skeptic might grant my claim that there is a pre-established world or society prior to my existence that is not the result of some divine creation yet deny any agency to society. She might agree that this is a sheet of paper because we call it that and deny that there is any "society" that is continually creating, negating, and transcending the present social order. After all, it could all result from chance or impersonal forms of causation as opposed to reason and agency. I think such a denial commits an ontological error, though. We need to ask ourselves what the social order consists of. The answer is two-fold. To speak in Aristotelian terms, there is both a material and a formal element to society. To credit the social order to chance would deny that any formal element played a shaping role in creating the social order. But how else could we speak of a social order if there were not this formal element? All would agree that matter is out there. But how does it get construed into objects absent an ideological framework? Surely we value and concentrate on some characteristics of matter at the expense of others. We have further developed a knack for bestowing "thinghood" on those characteristics we value. And this thinghood or object-status persists,

⁸Van de Vate, p. 81.

generally speaking. But since the social order is a process and does change, this persistence need not be eternal. Hence the dynamic nature of the social order.

Formal Elements of Society

To better explain the nature of the formal or ideological elements of society, I think it would be useful to look at more complex objects, viz., institutions or ideals in society as opposed to physical things. Surely things like justice and engineering (diverse examples, I admit, yet nevertheless enlightening) exist just as much as acorns do. We might equivocate on existence here and say that an acorn is tangible whereas justice is not. This point is debatable at best. If we understand existence to mean anything that shapes, influences, or is encounterable in the social order, then justice and engineering are perhaps more "real" than acorns. They are certainly more important. Justice shapes the social order, for example, in that it dictates and consequently helps ensure that innocent persons will not be harmed for frivolous reasons. If one is robbed and beaten on a desolate stretch of highway and attempts to settle differences with one's assailant in court, justice is encountered regardless of whether or not justice is meted out. If one cannot successfully prosecute the assailant, one feels doubly wronged since justice is not done to the assailant. The victim has suffered injustice and the assailant has failed to suffer justice. Justice, the idea and/or

ideal of fair treatment and respect has been present throughout from the moment of the attack to the gavel of adjournment.

Similarly, when one traverses the San Francisco Bay on the Golden Gate Bridge, engineering is immediately present in the world. If, in the future, one can travel beneath the English Channel by auto or trolley, engineering will be shaping the world. It is institutions like justice and engineering that help make the social order what it is. This is simply a version of the truism that man is the master of nature where nature is understood to be matter only. Mastery should not be understood to mean complete license. As Marx understood so well, man must eat before all else.⁹ And "the world" dictates to a certain degree how that eating will occur. There are obvious limits to the social order which the material element dictates. Yet the formal elements' constraints approach limitlessness when it comes to shaping things within the material boundaries. Just as a carpenter can construct any number of kinds and shapes of buildings given a set of building materials, a society can shape any number of social orders, be it Moslem, Communist, or pagan.

⁹Delos McKown made this point in conversation.

Part of any social order will be an ideology or set of ideals that "transcend" and guide the everyday experiences, both mundane and life-changing, of those within the social order. In other words, there is invariably a moral order. Hence, one social order is pagan as opposed to Moslem. While this moral order need not be purely formal, it is not as much constrained by the material order as it is by human longings. I use this phrase for lack of a better one. These longings are reflected in the form of ideals which serve to make sense out of the world. The ideals can range from Allah to scientific objectivity, yet they all serve the same purpose. They explain the world. The ultimate ideals are the first building block in the social construction called reality. There are then subservient ideals beneath them. They all have an ordering function and, as I said, influence everyday experiences. In fact, one could say that society is the acting out of a dialectical process between the ideals and everyday life which fails to measure up to the ideals.

It is not implausible to view the political and social history of the United States as an attempt to "actualize" the ideals espoused in the founding government documents. In them, a land of liberty and equality and freedom is glowingly established in the form of laws. The past two hundred years have been an attempt to enforce those laws.

Take the legal understanding of person for instance. Initially, a white male who owned a certain amount of land was considered a person in the constitutional sense. Women, blacks, and native Americans were excluded. The situation is different today, arguably much different. What this change reflects is two-fold. On the one hand, there is the recognition that the "real world" does not measure up to the standard that subsequent generations appeal to, e.g., equality for all. The original intent was not equality for all, but some. Women and Blacks were not meant to be equal to males. Hence, a struggle ensues to merge the real with the ideal. There is that longing for the world "to be as it should be." Another similar approach¹⁰ is to claim that the pain of suffering injustice¹¹ gives rise to the ideal, and subsequent struggle, for justice. So there is that constant positing of a goal to be achieved. Society is simply the process of striving for that goal, that ideal, be it the kingdom of God or a classless society.

The point to be made here is that there is something in the world just as real and just as important as matter.

¹⁰This is a view of justice considered in Plato's The Republic. cf. Book I in The Republic and Other Works, Trans. by B. Jowett (Garden City, New York: Anchor Books, 1973), p. 28.

¹¹The use of injustice here is anachronistic. However, there can be a perceived lack or problem with something. This perception gives rise to a method and vocabulary of dealing with the problem.

In Sartrean terms, we could speak of the lack in being-for-itself. There is that dimension of the "something else that can be but is not" which must be recognized, which cannot be ignored, if we are to understand society. In fact, the "something else" is what makes society understandable. Reason is what we are actually talking about here. As I said earlier, it is useful to view society as a kind of agent. Further, it is clear that this agency is rational. It is rational in that the world can be explained, and nothing more. I say this in order to avoid equivocation because one wants immediately to object that the world is not rational. Albert Camus has described quite well the absurdity of the world from the perspective of the human condition. So how can the same world be both rational and absurd? Judging the world to be absurd proves my point that it is rational. It is rational because it can be explained, contra to Camus. To call the world absurd is to give a description and explanation of it. Nothing else is necessary.

The way it is explained is best understood as a reflection of what I called human longings, the desire for what there is not to be. Since it is this hoped-for world which does not yet exist that serves as the vantage point by which the present world is judged, we see that there is no Archimedean vantage point¹² by which to judge the world.

¹²Van de Vate, p. 106.

The reason, or formal element, which orders the world is entirely human. Reason is contingent upon the consciousness within which it resides. Hence, all explanations of the world, and subsequent social orders as well, are affected, as I have said, by human longings.

The reader should note that not only am I borrowing Aristotle's categories of form and matter, but I am incorporating an element of telos as well. It may be tautologous to point out that reason involves direction. Nevertheless, it is an important point to keep in mind. Just as the intellect is active as opposed to passive, it is active for a reason. This is another way of saying it has a goal or purpose in mind. The intellect (society) orders the world in such a way to make a society possible. There are two senses of society being used here, of course. There is society as a collect (all of us). Then there is society as an agency (intellect) which preserves itself by organizing the collect through institutions,¹³ these institutions being of the type justice, engineering, medicine, etc. Obviously, these institutions have a history to them. They are not static, nor are they entirely autonomous. Medicine is not unaffected by law and vice versa. To say they, and subsequently society as well, have a history is to note that there is a certain

¹³Ibid., p. 108.

sense to them; they can be explained. Not only is their past explainable, but their future is as well. There is prospective as well as retrospective explanation. We know where society has been and, while we do not know for sure where it (we) will be or go in the future, we know where it will attempt to go. We can make projections about the future based on the ideals we presently embrace. Just as we assume that in the twenty-first century medicine will be attempting to lengthen the span of individual human mortality since it views death and suffering as enemies, we also assume that society will be attempting to secure order and organization for us all. We can make these predictions based on the ideals we embrace and we can justify these ideals in terms of what I have called human longings. We, both individually and collectively, lack the absolute assurance of these social states. Hence, we attempt to secure them.

As a side note, I must mention that simply because, generally speaking, we all lack these assurances and hence share a common goal, viz., securing these assurances, it does not follow that we collectively recognize and endorse either a common form of order and organization as the goal or a common path or framework to that goal. We may all want the same thing (i.e., order) yet we may want both to structure it and to reach it differently. Hence, there are different

political, social, and ideological groups and struggles which shape the formal elements of society.

Personhood

Regardless of the differences and disagreements present in the collect, the collect is a social order. As I have said, this whole complete social order precedes the existence of the individual. Further, the individual is not born a member of society. Rather, he is born with a predisposition toward sociality, and he becomes a member of society.¹⁴ Through the socialization process, humans become themselves. They become the people they are and hope to be. Personhood, in the full sense, is an accomplishment¹⁵ possible within only certain kinds of contexts, viz., social orders or societies. Hence, this full personhood, the autonomous self, what I shall refer to as individuality, presupposes a society. In fact, developed Western nations have embraced individuality as the proper goal of society by deed if not by words. Individual liberty is the political catchword, yet this freedom is a product of the institutions of society. Education, employment opportunities, technology, and a wealth of natural resources and the ideological

¹⁴Berger & Luckmann, p. 129.

¹⁵Not all moral agents are persons in the full sense. The presence of a person does not necessarily imply the presence of personhood in the full sense.

structure inherent in the society have resulted in the production of free, autonomous individuals. Without the presence of these, the opportunity and thus the possibility of individuality would never occur. So, society is that which makes individuality possible in that society provides education, employment, etc.¹⁶

I have arrived at this point by showing how society as intellect or consciousness first creates the world in that the world is not simply matter. Secondly, it creates the things of the world as well in that all objects have a history. Individuality is the pride and joy, so to speak, of all its creations. It is the goal sought. It is the telos behind the formal element. (Of course, not all societies value individuality. It can be de-emphasized in a world view in lieu of some other goal.) A goal is posited and recognized by human consciousness and a struggle or attempt ensues to reach that goal.

Why does the attempt ensue? First of all, the attempt does not always ensue. Some are content with much less than full autonomy or individuality. Generally speaking, though, most strive for individuality. The reason they strive for this is that most are successfully socialized. The socialization process works on most of us. The success of the process is essential for the persistence of society

¹⁶A lengthier discussion of individuality follows in Chapter Two.

and subsequently the goal of individuality or any other goal sought by a society as well. If the goal of a society is neither sought after nor achieved, i.e., embodied, by individual members of the society, then the goal (telos) of the society diminishes and could potentially vanish. The society could lose its focal point, i.e., goal. The persistence of that society (not the physical lives of humans necessarily) would be in grave danger. Thus, if a society is to persist and thrive it is necessary for that society to create and perpetuate both the desirability and attainability of its chosen goal. But there is no guarantee that a given society will succeed and survive. It must struggle to do so. When we remember that reality is a product or creation of human consciousness, we see that contingency is a fundamental characteristic of everything. Everything could be other than it is. Consequently, it is imperative for society to undergird its creation in order for the creator to persist.

The way it does persist is through consensus. The power of consensus ensures that paper remains paper. The power of consensus ensures that literacy is preferable to illiteracy. The power of consensus ensures that individuality is sought by most. Going against the consensus can and often does have bad consequences. The insane person or the idiot who sees pink daisies where ashtrays should be

seen is ostracized. The dissident who questions the goal and foundation of society is silenced either by death or exile.¹⁷ The consensus is sufficiently maintained, and society is preserved. This is why the attempt for individuality ensues in our society, as an important part of the content of this consensus. The same would be true of other societal goals besides individuality. The presence of consensus makes the goal, whatever it may be, a genuine possibility.

The power and necessity of consensus is not absolute, though. First of all, consensus is not a necessity in all areas. One can be successfully socialized, i.e., function as a legitimate and tolerated member of the social order, and differ from the consensus view concerning fashion or religion. In other words, plurality in many, if not most, areas is certainly tolerable, if not healthy as well, in a viable society. Secondly, society is dynamic. This dynamism requires a challenge to and a change of consensus from time to time. Disagreement and conflict yields solution and progress as well as discord. I mention this to defer the attack of critics who may point to numerous examples where there is lack of consensus or where the

¹⁷Exile admits of degrees. The revolutionary can be exiled either through deportation or imprisonment. This is political exile in that the person is removed. There is "social exile" as well. For example, the flower child can be ostracized from society. This ostracism functions as a type of exile.

consensus view may clearly be mistaken. These counter-examples are beside the point because consensus is essential in two areas only. One is the consensus needed to construct and maintain objective reality.¹⁸ We must have agreement so that language and communication concerning the external world is possible. Also, this agreement is necessary for successful manipulation of the external world. Secondly, consensus is necessary with regard to the fundamental-guiding ideological principle, the telos of society. Absent a recognized goal, there can be no comprehensive, systematic order. Divergence would best describe such a grouping as opposed to convergence, which is a characteristic of society. Further, if there is a revolution with regard to this principle, the revolution is universal with regard to the collect. The ordering and placement of everything with regard to both objective reality and how one places his "self" in that reality will be affected. No longer would everything be ordered around and make possible individuality. Rather, everything would be ordered around and make possible, for example, the enactment of the will of Allah on earth.

An immediate and obvious objection to this last point is that a revolutionary change need not affect "selfhood" as it does the external world. In other words, one can envision living in and surviving such a revolution and still

¹⁸Berger & Luckmann, pp. 47-128.

seek individuality as opposed to submission to Allah. I could respond that one's lack of conversion is simply an indication that a revolution is not complete. Yet I suspect that no revolution is total in that regard. Revolution could be complete and not total in that the collective goal could change, yet some individuals would cling to the former collective goal. After all, plurality is, as I mentioned earlier, compatible with a workable social order. But the best response I can offer is similar to this initial one yet more to the point. It also will help answer our initial question, viz., what is a person?

Just as reality is a collective human product, so is the individual self, that which we call "I" or "me," a collective human product. A world is created by a collective intellect. This world, or society, in turn produces individuals. So the person who "worships" individuality as opposed to Allah after the revolution simply indicates that the previous social order was successful in socializing that particular agent and the new order has not yet and probably will never re-socialize him.

The critic assumes the possibility that the self is somehow autonomous from and prior at least epistemologically to the social order. This assumption is false. To assert otherwise, to say that the individual need not be a product of the social order, one must offer some suggestion as to the nature of the self. The Cartesian view immediately

comes to mind. Descartes assumes that the self is essentially thought or mind as opposed to the body. He equates self with consciousness. Consciousness is both a necessary and sufficient condition of personhood. The body is merely an accidental property of the self. Further, a person need not necessarily be in a world with others. Disembodied existence poses no problem, then, for Descartes. A person can be born into the world, occupy a body for seventy years, discard that body for a new one or no body at all, enter another world, literally, and remain the same person, i.e., unified self, throughout. The person who suffers diabetes is the same person who experiences celestial joy long after his body is consumed by worms. I am constant and unified regardless of the circumstances of my existence. The Cartesian view implicitly claims that the self can exist in a void. All that is necessary is that the self be aware of the void, or suspect a void, or be conscious of anything at all, even total isolation. Obviously the Cartesian position assumes some metaphysical and ontological views antithetical to the view I have argued for.

I have argued that everything real except matter is contingent upon the creative intellect including the creative intellect itself. As such, this creative intellect is not unconditioned. Let us return to our analogy of the carpenter. The carpenter is not totally free to build whatever he wants. As I said earlier, the wood determines to a

certain degree what can be built. Human consciousness, and thus individual consciousnesses, are conditioned by certain facts of existence. Among these are that human consciousness is dependent on a body and this consciousness always exists in a world of others. I am borrowing heavily from Martin Heidegger's Being and Time here. He contends that the capacity for dependence is a necessary feature of personhood. Persons are dependent on their bodies, they always are in a world, and this world consists of others. The force of Heidegger's position is evidenced by any occasion of consciousness. Any mental awareness will be associated, either directly or indirectly, with more than the mind. Consider a case of feeling joy. (I am attempting to examine an example of "pure introspecting" where the introspector is contemplating nothing but what is in his or her head, so to speak.) One is elated and content, carefree, untroubled. Yet joy is not entirely internal. I am joyful for some reason. The realization that one is not stupid, for instance, is always associated with some subsequent realization, e.g., one can perform geometric proofs, understand Spinoza, etc. One is joyful because of a condition of one's existence in the world. The world is less foreboding to a tenth grader after he or she masters proofs in geometry class. A philosophy instructor is happier knowing that Spinoza can be understood and hence explained. The point to be made is since we are joyous for some reason, always, the

reason for which we are joyous is always connected with the world. In Heidegger's terms, an existential condition of a person's (Dasein's) existence is Being-In, i.e., a person is always in a world and never in a vacuum.

One could certainly argue that neither I, nor Heidegger, have proved that dependence or association with a world and others is essential to personhood. A critic could grant that, yes, all experienced mental states thus far have been associated, directly or indirectly with a world, with a body, and with others. But that is no basis for categorically concluding that it must necessarily be so. If it is merely an inductive inference, it is surely possible that association with others is not necessary for personal existence. Hence, logically there could be a self unconditioned by the existence of a body and others. This is a valid point for the critic to make. Even though it may be possible to have a disembodied self, such a self would obviously not be obligated under any circumstances to participate in non-therapeutic medical research for obvious reasons. Further, for reasons previously stated,¹⁹ such a person must also be a member of a moral community. I will assume, then, that we do not need to take into account the logical possibility of a disembodied non-communal self since we will deal solely with moral persons having minds and bodies. Unless

¹⁹See pp. 7 & 8 above.

it can be shown that this logical possibility has an effect on present obligations of persons, I see no reason to concern ourselves with the issue any further morally speaking.

However, epistemologically, it is more problematic initially. I denied earlier that the self is epistemologically prior to society. But if the self can be disembodied, it can pre-exist any society it happens to adhere in. The critic here is making all sorts of metaphysical assumptions that I have tried to dispel. He assumes the world is "out there" as a pre-existing container for everything. Such a view of the world does not rule out the possibility of a Cartesian self. On the other hand, if reality is a creation of a collective consciousness, the collect would have to be epistemologically prior to the individual. Since much has been offered in defense of this claim, I will not pursue this matter directly. It is a service to the reader only to point out the contrasts of the two views. I am no more capable of completely resolving the issue than any of the countless previous philosophers who have devoted scores of volumes to the issue.²⁰ Thus, the reader is urged to keep in mind certain key points I have made. I have defined moral persons as necessarily members of a society. Perhaps that point alone is sufficient to the topic of this dissertation. Further, there are the Heideggerian points that to

²⁰cf. Hegel's Phenomenology of Spirit, or Bradley's Ethical Studies.

be a person (Dasein) means that one is a body in a world with others. It is my contention that these assumptions yield greater explanatory powers to the philosopher than do more traditional Cartesian assumptions. Above all else, the philosopher ought to give the clearest, most comprehensive explanations possible.

Implications of this view of Personhood

What exactly follows from the view that the self is dependent on the collect? The meaning and content of the individual or self is simply a derivation from the preceding society. I know we all like to assume that I am separate from all else around us. Place me in another environment and I would still be the same self. There is a continuity of self even though there is a change of place or culture. I do not deny the existence of this I, a unique seat of consciousness. However, any content this individual consciousness enjoys is contingent upon what the society puts into it.

Let me stop and explain fully what I mean by the claim that any content the self enjoys is contingent upon what the society puts into it. The most immediate distinction to be noted is that the self is: 1) a "container" that can have things put into it; 2) what is put into it; and 3) the unity or synthesis of 1 and 2. (I am borrowing Sartre's analysis of "the lacked" in Being and Nothingness.)

In other words, there is a formal and material element to a person just as there is for everything else. The material elements (the container) of the self are those physical, biological, and genetic characteristics or facts which largely determine what content a person can have. This recognizes that the self is not totally free. Instead, the projects which people can choose, to speak in Sartrean terms, are conditioned by certain facts. Just as the carpenter can build only a finite number of structures from a finite resource, i.e., wood pile, so can society build only a finite number of persons who are conditioned by physical, biological, and genetic characteristics. Part of the material element of persons is their capacity of rational thought. Man has always prided himself on this supposedly unique attribute. I agree whole heartedly. In other words, the material element of persons is such that a person is a thinking, self-aware container.

The formal element of a person, the content that goes into the container, is society, the active, collective consciousness. Given that the container has the capacity for thought, it must have something to think about, i.e., concepts. Concepts, as I mentioned earlier, are social products. It is the ability to use and communicate the concepts, i.e., the ability to learn and use a language, that

allows one entry into the community of persons.²¹ I assume here that a person is one who in fact does rationally think. Hence, idiots and infants are not persons in this full sense. Some might wish to object that surely thought takes place, i.e., the mind works, prior to learning a language. After all, infants intelligently respond to the external world. While this is certainly true of infants it is true of racoons as well. We need some criterion to distinguish persons from racoons. I assume that language is the proper criterion. Further, I assume that language is a public mode of discourse as advocated by Wittgenst in Philosophical Investigations. Hence, to be a person is to be able to use language, both in communication and reflection. Language is the building blocks persons use in order to become who they are. Of couse, society does not put mere words only into containers. Society instills, or pours in, ideals, ambitions, etc. I do not mean to imply a strict determinism. By arguing that the content of the container is social or public in that all concepts and language are a social attribute and substance it does not follow that a pre-determined product results.

²¹cf. Quine, "Epistemology Naturalized" in Ontological Relativity and Other Essays (New York: Columbia University Press, 1969), pp. 81-85.

We must remember that the container has the capacity for rational thought once the tools of thought, i.e., concepts, are poured in. These concepts can be manipulated in a finitely large number of ways. Consider the carpenter again confronted by a large pile of lumber and nails. The analogy here is that the carpenter (person) has been given an externally determined resource of wood and nails (concepts). Now the carpenter is free to build what he decides. What he decides to build will be the third aspect of persons mentioned earlier, viz. the synthesis between the container and what is put into it. He can build a doll-house, a wagon, a gazebo, a large box, etc. Regardless of what he does build, the final product is contingent upon the ideas he has concerning wood and what can or should be done with it. In other words, what a person does with his or her life is contingent upon the ideas he or she has concerning the world. Further, these ideas are concepts and thus products of the concepts given or presented to the thinker. The ideas of the carpenter do not appear ex nihilo or unconditioned. Similarly, the persons we make of ourselves are not original creations. We are a product of what has been put into us. This does not mean we are wholly determined. We are not a product in the same sense as a saltine cracker is a product. But we are conditioned. We are conditioned by society, the social construction of reality which is prior to us as individuals. To be an individual is to be part of reality.

The part that we are, though, is contingent upon what society puts into us. Since the carpenter's products are a result of his ideas about carpentry and since his ideas about carpentry presuppose carpentry in general, his ideas are contingent on something prior to himself. This is all I mean by saying that any content an individual has is contingent upon what the society puts into the individual. I am not arguing for a strict determinism. I am only claiming that we are products of something prior to us in the sense that what is prior has a shaping effect.

This certainly does not deny the existence of creativity on the part of individuals. After all, I am arguing that the goal of society is individuality, the realization by persons of their full potentials. Freedom is a meaningful word in this context. Hence, we can and do have different persons in the same society. My self is unique as is yours. But this "uniqueness" is contingent. So, the self in the full sense has no independent existence. If so, it would have to be contentless. And if there is anything that I and my readers are not, we are not contentless. We all have a content. Else, we could not know that we are, for knowing that we are indicates a content that is known. And my point is that the content is a derivation from society. The content can be shaped by the form of the individual, but what is formed is contingent upon what is presented to it to be formed. And the society determines what is desirable and

undesirable, beneficial and non-beneficial, in terms of content. We are all products. The initial distaste most of us have for such a claim is a reflection of the fact that uniqueness and individuality are desirable contents to have. We are socialized to perceive ourselves in that way. Nevertheless, the fact is that we are epistemologically subsequent to society. An individual person presupposes a moral order or society. (I should point out here that any society would be moral, i.e., norm governed.)

Then, a person is a product of society, an individual member of the group possessing all the value and worth the group bestows upon it. A person is not some independent, autonomous entity in the world, even if he strives for and achieves autonomous individuality. Everything the person is, is confined to and definable in terms of the social order. Given the epistemological priority of the society to the individual, the moral priority of one over the other immediately comes into question. Since the society creates the person, are the person's needs always subservient to the society's needs? In times of crisis we can all agree to an affirmative answer. However, it is not immediately obvious that the normative implication of the preceding pages are such that a utilitarian ethic is necessitated. I will discuss this point in subsequent chapters.

Summary

To summarize this chapter, I began by asking what a person is. More specifically, I asked what a moral person is since this dissertation is an exploration of the limits of moral obligations. I pointed out that in asking what a moral person is we must first understand what society is, for all moral persons are members of a society. First of all, I argued that society is a teleological process. Hence, everything in the world has a history of change. Everything shares a dynamism. Further, everything (physical objects, institutions, ideals, etc.) is contingent and thus subject to change since all is a product of a collective human consciousness. The workings of this consciousness consist of both a material and a formal element. The formal element is rational in that explanation of the world is possible. The formal element which makes explanation possible is goal-oriented; it possesses a telos. It is the telos which fundamentally shapes society. Our society is shaped such that it strives to make individuality possible. As such, it is prior to, is presupposed by, individuals. Society provides all the content which individuals enjoy. Hence, a person is essentially a derivation of society. In the next chapter, I shall begin to draw out the implications this realization has for moral reasoning.

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CHAPTER II

ETHICAL THEORY AND THE CONCEPT OF INDIVIDUALITY

In this chapter the issue to be addressed is that of ethical theory. What is the proper theoretical approach to solving ethical problems in general and the particular ethical problem at hand, viz., whether individuals ever have an obligation to participate in non-therapeutic medical research? I will argue that a teleological approach is proper. However, I will differ from traditional hedonistic utilitarian ethical theories.

Morality and Ethical Theory

The first point in need of discussion is to understand the word theory. I assume my reader is familiar with the meaning and importance of ethics. By the same token, we all know what a theory is, what it does. A theory is essentially a vantage point. The Greek root of theory, *theoria*, is in fact the same root word for theatre as well.¹ Since a theatre is a place at which we view something, be it a play or a symphony, viewing or observing is intrinsic to the very notion of theatre as is performance. Viewing and observing is also intrinsic to theory. Just as there is a best seat in the house for an opera, so is there a proper vantage

¹I am indebted to Delos McKown, Auburn University, for pointing this out to me in discussion.

point for observing and judging human moral behavior. This vantage point consists of certain values moral philosophers use in order to make judgments about the rightness or wrongness of particular acts or policies. A Kantian has duty as a "box seat" whereas a utilitarian examines everything from the perspective of human welfare. As a result they often see things differently just as the spectator at a baseball game calls a play at home plate differently than the home plate umpire does. Of course, the umpire is in a better position to make the calls than is the spectator. If not, he would be in the bleachers sitting with the fans. The problem facing us is to find the proper place for the ethical umpire to be. Should we approach our task from the perspective of duties binding on all rational creatures? Should we consider every person a law unto himself or herself? Should we judge actions and policies in light of consequences alone?

In order to answer this question we first of all must be sure that we know what it is we are judging or officiating. Just as a film critic ought not to review a film using the standards of literary criticism or just as an umpire ought not to officiate a baseball game using the rules of volleyball, a moral philosopher must be sure that the values he or she uses are suited for the task. Hence, he or she must know what the task is. The task confronting the moral philosopher consists of judging human actions with

regard to the agent's moral duties, responsibilities, etc. The evaluation reflects the society's norms and values. That much is obvious and unproblematic.

The problem and controversy arises over, of course, what the rules and/or norms are. But prior to the question of which rules or standards ought to be chosen is the issue of understanding the nature of rules themselves. What exactly are they? They are concepts, I contend; and, as such, they are social products having a history and contingent existence and utility.

I argued in the last chapter that reality is a social construction. It follows from this that all moral precepts, rules, duties, etc. are products dependent on a producer, i.e., society. Hence, they are relative to and contingent upon their source. This rules out the possibility of universal normative judgments. Moral rules or precepts are not independently existing laws that have been discovered. They are creations like everything else. They have a phenomenal existence only. Further, as phenomena they are the reflection of a collective consciousness in contrast to a noumenal world. (I will address Kant directly later in the chapter.) This is why they are properly understood as products. They are made from something (consciousness) for something. Moral precepts are tools used to promote social goals. Unless the moral philosopher understands this, the resulting moral rules may be inappropriate for their task. All would

agree that moral rules are at least in part functional. I want to make the stronger claim that they are wholly functional and as a result have instrumental value only.

Some critics may fear an implicit endorsement of moral skepticism here. Such skepticism follows only if one presupposes that moral judgments are universalizeable for all agents for all time, a view which assumes an artificial, non-contextual view of morality. That view of the nature of moral judgments separates morality from any given society and places it in a static, ideal society. What I am skeptical about is the coherence of the notion of such an ideal society. Morality is contextual. Since morality is embodied in a set of operating norms and since those norms are contingent upon the telos of a given society, there is an inherent contingency to morality. This may not be pleasant to admit since so much is at stake where morality is concerned, e.g., the quality of a life or lives, the continued existence of a life or lives, etc., but it is true nonetheless. Thus, we are faced with the difficult responsibility of arbitrarily choosing moral norms. We are faced with the responsibility of arriving at and enforcing a justified consensus. Yet we must justify our own justification. We are God in the sense that we are lawmakers of final appeal.

What is it that we appeal to in our justification? Surely our morality will reflect something inherent and unique to that which it sets out to govern, i.e., persons,

since we are concerned with human morality. But to move from describing various justifications to explaining why one is chosen rather than another is perhaps an impossible task. That kind of question strikes me as being as difficult to answer as, if not more difficult, than the question "why do shoes lace up instead of down?" Causality in morality is very elusive, perhaps non-existent. We can explain fairly easily why some sets of moral rules are chosen over other competing sets. One set is a more efficient set than others for accomplishing the given task, i.e., realizing the telos of a society. If we want to know why a society has one telos rather than another, if we want to know the cause of the telos, who knows?

Before one can even approach an answer, however, one must keep in mind that the telos is not permanent. Even it is subject to change. But a given telos tends to change slowly. This gives us a clue that the explanation for why one morality is chosen rather than another will be a cultural, epochal explanation. Anthropologists and sociologists are better suited to provide these explanations than are philosophers. Of course, anthropology and sociology themselves are also bound to a certain epoch. This is why I think a fundamental mystery prevails with regard to causality in morality. Or, perhaps there is no mystery at all. Perhaps causality is not operative in this area.

Then, as unsettling as it may be, morality appears to be inherently arbitrary. But this does not make morality and its norms illegitimate. Morality still governs and evaluates the actions of moral agents. The legitimacy of morality stems from, and is recognized by, a society of moral agents. We are both lawmakers and lawabiders. And the law (i.e., the set of norms and values that order society) which we make and follow is not static. It is vital and responsive. The law, or morality, is affected by circumstances at times (e.g., war, natural catastrophe) and it is subject to the continuous scrutiny of its subjects. In other words, morality is dialectical. The subjects of morality, for whatever reason, constantly examine and challenge (through dissent and public debate for instance) the accuracy, efficacy, and perhaps even the legitimacy of the law. If rules or norms are found to be lacking, inefficient, or unjustified for any reason, they may be and sometimes are discarded. Hence, as I said, moral rules are wholly functional and purely instrumental. They have no intrinsic worth. So moral rules are contingent in nature, their value is instrumental, and their existence is finite. Of course, they may persist for scores of generations, but this fortunate or unfortunate circumstance should not persuade us that their validity is universal.

Not only are moral rules of no intrinsic worth, but the goal of these rules is of no intrinsic worth either.

All societies are organized. Organization presupposes valuation. Valuation presupposes purpose, intent, telos. This purpose will serve as the foundation for the set of governing moral rules. As I said in Chapter One, this telos can change. Thus, the telos is contingent, i.e., non-universal. Therefore, its good is not intrinsic, i.e., universal, since it is subject to change. The only general or universal statements we can make about societies are descriptive ones along the lines of the ones just made in this paragraph. We cannot make universal prescriptive statements. Thus, statements such as "love your neighbor," "pay your taxes," "respect persons as ends," etc., are not categorically true² even though they may be fundamental to, or the basis of, a given moral theory.

Individuality

Assuming the foregoing analysis is correct, it is very difficult to justify one moral telos in exclusion of others. The one I will attempt to justify is embodied by the concept of individuality. This involves three tasks. First of all, I will explain exactly what I mean by individuality. Secondly, I will show why it is preferable. Thirdly, I will argue that I am not treating it as a

²Of course, strictly speaking, the statement "Pay your taxes" is neither true nor false. Rather, such statements are equivalent to "You ought to pay your taxes."

categorical, universal moral good. Rather, I recognize its good as contingent.

a. The Concept of Individuality. For myself, I am entirely comfortable with equating what I refer to as individuality with positive freedom.³ However, positive freedom may quickly become negative freedom if the distinctions between the two are not maintained. Thus, freedom may quickly become liberty. One who has achieved positive freedom is much different from one who merely is at liberty. This distinction must be maintained. Individuality is an achievement. It is not a gift. A society cannot give individuality to anyone. Rather, a society can only provide the opportunity for achieving it.

Basically, individuality is a kind of self-realization. Persons possess the capacity for rational free agency. This capacity distinguishes us from other species. This dissertation, an exercise in moral reasoning, reflects the fact that humans recognize that the world is changeable and that some world-states (actual or possible) are better than others. Thus, that which is properly or truly human is

³I began to develop my understanding of individuality while taking a graduate seminar from Dr. George Brenkert, Department of Philosophy, University of Tennessee, Knoxville. I was heavily influenced by his discussion of Marxist freedom. See his "Freedom and Private Property in Marx" in Marx, Justice, and History, ed. by Marshall Cohen, Thomas Nagel, and Thomas Scanlon (Princeton, New Jersey: Princeton University Press, 1980), pp. 80-105.

rational.⁴ Kant was correct to at least that extent. The principle of individuality sets out to celebrate, promote, and preserve the rational free agency of persons.

Rational free agency consists of two elements. Rationality reflects the fact that persons can weigh choices, make decisions, i.e., reason. Free agency reflects the fact that persons are able, barring social, political impediments, to act in light of the results of their reasoning capacity. But there are good ways to utilize one's rational free agency and there are bad ways. (Neglecting one's rational free agency is also bad.)⁵

In Being and Time, Martin Heidegger argues that the essence of persons is existence. Only persons can stand back and examine their lives, i.e., see themselves in their true contexts. Persons have the unique ability to understand their places in the world, change their places in the world, or understand why they cannot change their places in the world. Understanding and change, then, are essential to Dasein, to personhood, and to individuality. Thus, knowledge and opportunity are essential to individuality.

⁴H. Tristram Engelhardt, Jr., "Human Well-Being and Medicine: Some Basic Value Judgments in the Bio-Medical Sciences," in Biomedical Ethics, ed. by Thomas Mappes and Jane Zembaty (New York: McGraw-Hill, 1981), p. 216. Engelhardt's views have also influenced my views concerning individuality.

⁵cf. Plato, The Republic, Book IX, in The Republic and Other Works, trans. by B. Jowett (Garden City, New York: Anchor Books, 1973), p. 281.

1. Knowledge. If one is to achieve individuality, if one is to be the person that one can be, one must have knowledge of one's capabilities and potentialities. Further, one must have knowledge of one's limitations as well. One may desire the career of a professional basketball player and pursue that goal in vain if one's physical stature is closer to four feet in height than to seven feet. Obviously, one's body is incapable of making that desire an actuality. To continue to pursue that goal comes not only at the expense of achievement of the goal but at the expense of other realizable goals as well due to the time and effort spent on the unrealizable goal. In order to achieve individuality, then, one must have knowledge of one's self in terms of both mental and physical capabilities and limitations. Further, one must have knowledge of one's social self as well. Where do I fit into the social order?⁶ What does it mean to be a male, to be a chicano? What are the consequences, both good and bad, of not qualifying for financial credit? These social considerations are simply a reflection of the Heideggerian contention that we always are in a world with others. These others may be good, bad, or indifferent. Nevertheless, these others always exert a certain control or power, either intentionally or unintentionally, over who I am and who I can be. If one lives in

⁶cf. Sartre's discussion of "The Facticity of the For-Itself" in Being and Nothingness.

ignorance of this fact, one's aspirations are potentially in jeopardy and often thwarted. In order to avoid this failure and frustration, knowledge is essential. One must have knowledge of one's self in the world. Knowledge of either alone is insufficient.

2. Opportunity. Knowledge of both alone is insufficient also. The opportunity to act in light of that knowledge is essential as well. It is one thing to be aware of one's potentialities. It is an altogether different matter to have the opportunity to achieve them. Opportunity is the second component of individuality. Without this opportunity, potentialities are useless except as a source of frustration.

3. The fruits of knowledge and opportunity. What has one done, though, if one has utilized her knowledge and opportunity in such a way that she has achieved individuality? Basically, one has defined oneself. One has interjected oneself into the world. One has asserted oneself to such an extent that the world is shaped by the individual, to the extent possible, rather than vice versa. Let me use an analogy to explain what I mean.

Kayaking is a white water sport. In it the kayaker is carried downstream by fast moving currents interspersed with flat, relatively calm stretches of water, depending on

the given stream or river. The "object" of the sport is to demonstrate a certain degree of advanced skill and dexterity in handling the kayak in the various water conditions, e.g., rapids, eddies, standing waves, etc. It is important to note that a kayaker does not simply run the river. It is not the point of non-competitive kayaking to travel from point A to point B as quickly as possible. Rather, the kayaker seizes the opportunities presented by the river to exhibit both his skill in maneuvering the craft and his mastery of the river. He travels upstream as well as down, he surfs standing waves, rolls the kayak, etc. The paddler, with the aid of his equipment, uses the river to entertain himself and to demonstrate his talents. The paddler interjects himself into a potentially hostile environment and exerts control over the river. The paddler turns both the river and the kayak into an object for him.

By the same token, one who has achieved individuality has made the world serve one's own self-defined purposes. These self-defined purposes are not unlimited. The world places limits on a person's individuality just as the volume, force, and direction of the river places limits on the kayaker. Nevertheless, one who has achieved individuality is one who has succeeded in manipulating the world to serve one's own purposes rather than one who serves the purposes of and is manipulated by the world and/or individual others. In this manner one becomes a truly human, i.e., rational,

self. One has realized the restrictions and opportunities that are present, and one has acted in such a manner as to make of one's life what one wants it to be to the extent possible. One who has achieved individuality is one who has excelled in life. This excellence results in the creation of a near sovereign self.

Then, individuality is truly an achievement. As such, it cannot be granted to or bestowed upon anyone. Rather, the preconditions alone may be, and where possible, ought to be provided. These preconditions are knowledge and opportunity. The capacity for knowledge presupposes certain genetic and psychological preconditions over which society cannot presently⁷ exercise any control. But knowledge also presupposes a certain degree of education (formal and informal). This is subject to the actions of society. Thus, society ought to provide an education to its members so that they are to be able to achieve individuality. Similarly, society must provide opportunities to individuals to excel in life as they see fit. Hence, society must place a minimum of both internal and external restraints on persons and a maximum of liberty. An internal constraint, for example, is a socially instilled value such as the need to respect the feelings of others. An example of an external constraint is

⁷I say presently since we may be able to manipulate the genetic preconditions of individuality in the near future.

the establishment, by law, of a maximum speed limit. These minimums and maximums are defined within the constraints established by society's obligation to provide opportunities for a person. I am not going to give an exhaustive account of what these opportunities are. I will limit myself primarily to the role health plays in one's quest for individuality and the subsequent role that medical research plays with respect to health. (See Chapters Three and Four.)

The reader should see by now that I am using a pragmatic, teleological approach to ethics. Individuality has been identified as the chief human good. Individuality has been defined as a self-asserted and self-directed achieved excellence that results in the creation of a genuine person. It is incumbent, then, upon society to make certain provisions in order to insure that individuality is a genuine possibility. Now we can turn our attention to the task of establishing individuality as the morally preferable chief human good.

But first let me briefly summarize the difference between the concept of individuality and the concept of negative freedom or liberty. Individuality is an achievement. Liberty, on the other hand, is a state of affairs granted to someone. Consequently, society can make people free in the negative sense but not in the positive sense. I can be at liberty to drink beer or water because society gives me that opportunity. I am at liberty regardless of any action on my

part. But the same is not true with respect to individuality. Society can, and should (I argue), grant me the opportunities and preconditions needed for individuality. But I must do something with what is given to me. This is the main difference between embracing individuality as opposed to liberty as the core concept in this study. To be at liberty is a way to be in the world. Individuality is a way of being with the world.

b. The preferability of individuality. Given that I have adopted a teleological approach to ethics, I need to justify my choice of a goal. One important justification for the preferability of individuality is the previously mentioned fact that individuality celebrates, preserves, and promotes that which is truly human, i.e., reason. Persons are differentiated from other species by their capacity to understand the world and thus manipulate the world as well. Surely there are other human goods as well which incorporate reason, such as happiness and pleasure, but, as I will show, they do not have the inherent moral constraints that individuality has. Happiness is served by reason in that persons can discover what makes them happy and thereby increase their happiness. The same is true for pleasure. (I define happiness as satisfaction and pleasure as enjoyable localized physical states.)

Happiness and pleasure may utilize reason only to further their own respective ends. A hedonist may use reason

only to maximize her own pleasure. Here, reason is used for pragmatic means alone. Reason is used merely to serve the agent. Reason may be egocentric in its utilization. But the case is different with respect to individuality. Individuality must utilize reason to the extent that the agent understands adequately her existence, i.e., the conditions and constraints she is subject to in the social world. And if one fails to understand adequately one's existence one lacks a prerequisite of individuality, viz., knowledge. On the other hand, someone can achieve the goal of a quantitative hedonistic system and remain oblivious to many of the insights gained by individuality. Suppose someone is a tennis freak. A good day is one where the person gets to play at least two sets of tennis with a challenging opponent. Surely one can do this and remain ignorant of crucial facts of one's existence, such as why one enjoys tennis so much, what the cost of the devotion to the sport is in terms of other sacrificed pleasures, etc.

Individuality as a goal necessarily utilizes the full capacity of reason. Thus, it is a more exclusive goal than is happiness or pleasure. It would judge fewer lifestyles to be morally ideal. I use the phrase morally ideal to indicate that the principle of individuality does not necessarily condemn persons who choose not to pursue individuality as a goal. Individuality allows for, indeed it promotes, pluralism both in terms of how individuality is

achieved and in terms of whether it is achieved. No one is morally obligated to achieve individuality. Rather, persons should have the opportunity to do so. Thus, adopting individuality as the chief human good obligates society to provide the means to individuality. This is not true for happiness and pleasure. It is logically possible for a society to provide the means for happiness and pleasure in such a way that individuality would not be a genuine possibility.⁸ Such a society would neither appreciate nor celebrate that which is truly human since such a society could provide the means for maximizing pleasure and at the same time not provide the means for someone to exercise his rational free agency.

Rational free agency is truly human, i.e., it celebrates and promotes reason, whereas hedonism is not. And the use of that agency ought to be available to persons in a society if that society claims to be morally worthy, i.e., if it claims to serve and promote human well-being. Since the principle of individuality does necessarily make the exercise of that agency a possibility it is morally preferable as a goal for a teleological ethical theory. It is preferable because it necessarily celebrates and promotes the truly human. (I will discuss these points again in the

⁸The standard example cited is Aldous Huxley's Brave New World.

chapter when I contrast my theory with quantitative hedonism and when I address the issues of justice and tyranny.)

The principle of individuality is pragmatically preferable as well as morally preferable. It is pragmatically preferable because it promotes the growth and development of society. We must recall that society is not static. Society is vital and everchanging. Society is often times searching for new ways to improve the lives of persons. Consequently, society must seek to discover new knowledge and more useful truths. The most efficient way to do this is through a policy of free inquiry. John Stuart Mill gives an excellent defense of this view.⁹ A policy of free inquiry requires pluralism. Pluralism, as just mentioned, is integral to a society committed to individuality. Again, this is not necessarily the case with all teleological ethical systems. So, not only is individuality preferable as a goal morally speaking, it is preferable as a goal pragmatically speaking as well.

C. The contingent, non-intrinsic good of individuality. First of all, I do not equate intrinsic goodness with being good as an end. Obviously, I consider individuality good as an end. But individuality lacks intrinsic, inherent goodness. Individuality is not good in itself. If something is inherently, intrinsically good, it is good in a

⁹cf. John Stuart Mill, On Liberty, Chapter Two.

non-relational way. The reader will recall from the first chapter that all concepts, and surely goodness is a concept, an evaluative concept at that, are relational. Concepts result from the evaluation of objects by subjects. Individuality is no different from anything else in this respect. Thus, the good of individuality cannot be an intrinsic, inherent, non-relational good. It is good as an end. Further, the end is a good end, both morally and pragmatically.

But the goodness of individuality as an end is still a contingent goodness. I mentioned previously in this chapter that we cannot make universal prescriptive statements. Hence, the moral goodness of individuality is contingent. But its contingency rests on other factors as well. The pragmatic worth of individuality is connected to an empirical assumption. I assume that pluralism best preserves and promotes a just society. This is clearly a prediction that can be proved false by future experience. If that were to occur, the pragmatic worth of individuality would be undermined. Similarly, the moral preferability of individuality could be undermined as well. Again, I have previously discussed the difficulty of discovering causality with respect to the selection of moral values. I did mention, though, an apparent link between values and cultures. Human societies are epochal. Values arise from societies.

Hence, they are epochal as well. Thus, the moral preferability of individuality cannot be a universal preferability. It must be contingent.

Brief Description of the Theory

Thus far I have argued in defense of a teleological ethical theory that takes a very pragmatic approach to morality. The fundamental axiom of my theory is individuality. I have argued that society ought to be arranged so that persons' capacities for achieving individuality are both respected and promoted. Thus, my theory will involve both positive and negative duties for individuals, as I will explain.

Under my approach, one does not have to achieve individuality in order to be a morally good person. I do contend that individuality is the highest good that one can attain, but morally acceptable persons need not necessarily strive for individuality. It is hoped that persons will strive for individuality. To the extent that they do not, they deprive themselves of the full enjoyment of their essential humanhood, viz., rational free agency. But, persons are primarily evaluated morally with respect to how well they fulfill their obligations. Since society is obligated to both respect and promote a person's capacity for individuality it follows that persons are obligated to refrain from doing certain things to others. I, if I am to be a morally good person, must not harm or interfere with a

person's capacity for individuality. Similarly, if I am to be a morally good person I must also take positive steps to help society promote persons' capacities for individuality. I must do good as well as avoid doing harm. I have binding obligations in both respects. Of course, there are limits to the extent of one's binding obligations in both respects to promote individuality. Chapters Four and Five will address those limits. Nonetheless, there are binding obligations of beneficence. Thus, my approach to ethics is similar to Utilitarianism in that respect.

Utilitarianism

My view is in clear contrast with any form of utilitarianism that is associated with quantitative hedonism. Also, my view contrasts with utilitarianism in general since I hold there are no non-relational, intrinsic goods such as happiness or pleasure. But there are comparisons to be made as well. My theory is compatible with what may be called ideal utilitarianism with respect to the issue of pluralism. But I do not think it is necessary for me to compare my view with utilitarianism to an exhaustive degree since ethical theory is only a secondary issue of this study. Instead, I will address two issues only. I will first briefly discuss supererogatory acts. Then I will address the issue of justice. First, I will give a utilitarian defense of justice. Then, I will argue that justice is required by the principle of individuality.

a. Acts of Supererogation. Utilitarianism has been criticized for being unable to give an account of supererogatory acts. Utilitarianism in general holds that actions which produce a net balance of pleasure (happiness, good) over pain (unhappiness, evil) are obligatory. Or, if this is not possible, actions which produce the least net harm are obligatory. Thus, if some action which causes extreme personal sacrifice, harm, or debilitation will promote the general welfare it is obligatory for the person in such a position to perform the action. This follows if one grants that we are obligated to provide the greatest net good or the least net harm. But the conclusion seems clearly to be wrong.

Whether or not this is a legitimate criticism of utilitarianism is not important here. Rather, I want to point out that the possibility, even, of making such acts obligatory does not even arise under the theory I have sketched out. That which is fundamentally good is a person's capacity to achieve individuality. All else is evaluated with respect to that. The obligation of society, and of each member individually, is to protect, preserve, and promote individuals' capacities for individuality. The reader should note that the obligation is threefold. Society should protect, preserve and promote persons' capacities for individuality. So, unlike utilitarianism, I am not concerned with producing a net amount of individuality.

Rather, I am concerned with promoting the most individuality possible. The constraints which follow from the duty to protect and preserve capacities for individuality help define what is possible. Thus, to say that one is obligated to sacrifice that capacity is totally unjustifiable since this would jeopardize the capacity rather than protect it. A person may volunteer to do so if she so chooses, but she can never be obligated to do so. (In Chapter Four I will show that participation in some types of non-therapeutic research does not jeopardize a person's capacity for individuality. Hence, voluntarism is not an issue.)

b. Justice

1. The utilitarian necessity of justice. Utilitarianism has traditionally been criticized for not having a necessary principle of justice. I have mentioned earlier in the chapter that this is a valid criticism of some forms of utilitarianism, viz., quantitative hedonism. However, I think qualitative hedonists and utilitarian pluralists can give a very good account for the necessity of justice. Any utilitarian theory is preoccupied with consequences. But such theories are concerned with long-term consequences as opposed to short-term consequences. I think one can make a convincing argument that an unjust society, or a society that periodically neglects justice, will, in the long run, frustrate the achievement of its utilitarian goals (excepting possibly the goals of quantitative hedonism).

The utilitarian theories under consideration would seek to maximize what may be called the higher goods (whatever they may be) in life. These goods will be available as the result of society. (The reader should recall that I argued in Chapter One that all the content an individual has is social content.) Thus, society is the source of the goal or goals sought. Now, an unjust society will be less efficient at and even detrimental to achieving the goal or goals. Why?

First of all, prudential reasons dictate the necessity of justice. If injustice prevails, innocent persons are harmed, abused, mistreated, etc., for no good reason. If society condones this, then persons lack any non-precarious guarantees that they will not suffer injustice either. A person suffers for the sake of himself. A precedence of injustice has been set and for reasons of self-interest one is disturbed. One is disturbed because persons are not guaranteed just treatment. Hence, everyone is potentially at risk. Informed individuals realize this and suffer accordingly. So, in the long run possible harm may follow for everyone by injustice since it removes any guarantees that persons will be afforded the opportunity to enjoy various utilitarian goods. The long-term ill effects seem to outweigh any short-term benefits of condoning injustice.

Further, if individuals are morally sensitive they suffer doubly from injustice. Condoned injustices not only cause harm for prudential reasons, they cause harm for moral reasons as well. Morally sensitive persons are disturbed by injustice for the sake of the other as well as for their own sake. They suffer independently of any self-interest they may have at stake.

But why should people be morally sensitive to others? Individuality requires it, as I will shortly explain. This explanation will provide a non-utilitarian argument in favor of justice as a prerequisite of individuality. I should point out that this discussion will be somewhat of a digression. The conclusions I reach later in this study are thoroughly compatible with utilitarianism. However, I still think it is useful to point out one last theoretical difference to add to our discussion of supererogation. This will allow for a more thorough contrast between my position and non-quantitative hedonistic forms of utilitarianism.

2. Individuality, justice, and tyranny. I will begin with the assumption that a society embracing individuality as its telos must be a just society. Knowledge and opportunity are prerequisites of individuality. When you add the assumption held by virtually all contemporary ethical theories that persons are of equal moral

worth¹⁰ the necessity of justice follows. If persons are going to be granted the opportunity to achieve individuality, there must be just and at least somewhat equitable distribution of certain social goods, e.g., education, liberty, access to health care, employment, etc. Hence, justice is a real social need in a society shaped by individuality.

But the question remains as to why justice is a necessary attribute of a person seeking individuality. Why can't a tyrant achieve his self-realization, his full autonomy at the expense of the welfare of others? The answer is really fairly simple. The tyrant operates with the assumption that other persons exist merely for his benefit. He treats others with the degree of respect necessary to serve his own ends. His understanding of others is to view them as moral inferiors.

But others cannot be morally inferior given the moral equality of others. Of course, the tyrant clearly rejects this assumption. But the tyrant cannot reject this assumption and still achieve individuality. Individuality presupposes an adequate understanding of one's position in the world. This adequate understanding includes the realization that a person exists in a world of-others and in a world for-others, as Heidegger argues. This world of-others and for-others is not the creation of the individual. It is a

¹⁰This point is reflected in Kant's Categorical Imperative and the traditional utilitarian calculus which counts the good of one person as one and not more than one.

fact the individual is subject to. It is a fact the individual is confronted by. It is a fact the individual must understand and work with, not around, if one is to achieve individuality. The tyrant, however, views the world as others-for-self. But of course the tyrant is not so all-powerful. Even if he achieves the role of master over others, he suffers from bondage.¹¹ The tyrant tries to work around the social barriers of his existence and ultimately fails in the quest for individuality. Ignorance precludes achievement of individuality. This should not suggest that omniscience is a prerequisite. Rather, some fairly complete degree of knowledge is a prerequisite which the tyrant lacks.

If the foregoing analysis is correct, individuality demands that persons be moral rather than amoral or immoral. One must understand and thus shape one's life around the view that one lives in a world of moral equals.

Kant

Finally, I will briefly examine Kant's approach to moral theory. We will see that it is inadequate as a theory. Kant struggled to discover a basis for moral law that is universal and binding on all rational creatures in

¹¹cf. Hegel's discussion of this point in "Independence and Dependence of Self-Consciousness: Lordship and Bondage" in his Phenomenology of Spirit. Also, see Waiting for Godot by Samuel Beckett in which Vladimir and Estragon share the master and slave relationship.

general, not just human persons. Kant says that "since moral laws ought to hold good for every rational creature, we must derive them from the general concept of a rational being."¹² This is clearly opposite from my approach. I identified contingency as a central element in the world and thus of moral precepts as well. Kant, on the other hand, is in search of moral absolutes that are justified in themselves, independent of any human concerns or characteristics. "[M]oral principles are not based on properties of human nature, but must subsist a priori of themselves."¹³ As a result, Kant sees no need to consider all the points I stressed in the first chapter. But, if individuals are dependent on society, and if society is a set of contingent relations in search of contingent goals, and if a moral theory is justified in terms of how well it facilitates and helps shape these goals, then there is no room for absolutes in ethics. Moral standards and laws are not justified independently of human nature or human concerns. In other words, one cannot deny the role of consequences and contingent facts in judging moral rules. If a former moral rule interferes with new justified goals of society, the rule loses its authority. For example, extreme national dangers

¹²Immanuel Kant, "Fundamental Principles of the Metaphysic of Morals," in Classics of Western Philosophy, ed. by Steven M. Cahn (Indianapolis: Hackett Publishing Company, 1977), p. 855.

¹³Ibid., p. 854, footnote 5.

may justify neglecting the privacy of certain individuals which it was previously beneficial to respect. Kant is unable to account for this. Instead, he sets out to establish the authority of a categorical imperative. Duties apply categorically given their basis in reason. Reason has a noumenal origin. Yet I have argued that the world is phenomenal, not noumenal. The world is "appearances" and they are certainly subject to change. Moral duties, like all else, are "appearances" as well. Hence, their value is instrumental, not intrinsic. If an imperative loses its instrumental value, it loses its moral authority. And imperatives can lose their value since historical, social circumstances change. Our moral rules must change also. So, "there is, then, no immutable, categorical, imperative, as Kant thought, but only a mutable, social imperative."¹⁴ Kant not only is sitting in the wrong seat by which to call the game, he is at the wrong game. He is observing play among "all rational creatures" whoever or whatever they are. The game, though, is between human persons. Hence, it ought to be judged accordingly.

Conclusion

In this chapter I have tried to strike a balance between the two traditional approaches to ethics. This is

¹⁴Milton Fisk, Ethics and Society (New York: New York University Press, 1980), p. 85.

what the principle of individuality does I think. It promotes that which is unique to persons alone. But exactly what is the prescriptive force of individuality?

I admit it is a very vague precept. It is much like the basic precept of natural law ethics: to do and promote good, and avoid evil. It is a guide, though. As I mentioned earlier, it has certain pre-requisites, viz., knowledge and opportunity. Opportunity, further, implies a need for justice and equality. Hence, we know to a certain extent what effect the concept of individuality will have in guiding society. Society is obligated, i.e., there is generally speaking a collective responsibility, to make both knowledge and opportunity available to all its members since all are morally equal. Also, there will be an obligation to disallow anything that will interfere with these being provided. Thus, the view I am presenting has a strong principle of beneficence and a strong principle of justice. Generally speaking, then, individuality as a prescriptive concept asserts that we ought to promote and protect the social pre-requisites necessary for self-actualization. Is there anything in this principle which would either exclude or necessitate the obligation to participate in non-therapeutic medical research?

This study is finally approaching the point where the issue can begin to be dealt with more directly. One more preliminary discussion is still in order, however. We need

to adequately understand the institution of medicine and the role that research plays in it. This will be the topic of Chapter III.

CHAPTER III

MEDICINE AND THE USE OF PERSONS

"People of every known human society value life and deplore its end."¹ Hence, there is the social institution of medicine. This social institution has had various guises throughout history, ranging from the witch doctor to the sophisticated heart surgeon who prides himself on being a scientist as well as a physician. Despite the different guises, the fundamental purpose remains constant. Since we all value life and deplore death, except in extreme circumstances, we look to someone or something to postpone the inevitable.

That which we look to, by and large, is medicine. Medicine is for the most part a service oriented relationship between physicians and patients. Since we value life and deplore its end, the aim of the relationship ranges from restoring health by combating disease, managing disease, or providing care and comfort in the face of death.² There are three key elements of medicine to be examined. We will look at the motivation of medicine, viz, compassion. How is it possible for physicians to show compassion in a professional

¹David Landy, "Death, Anthropological Perspective," Encyclopedia of Bioethics, I, p. 221.

²Edmund D. Pellegrino and David C. Thomasma, A Philosophical Basis of Medical Practice (New York: Oxford University Press, 1981), p. 63.

manner? It is possible given the epistemological foundation of medicine. As such, we will examine medicine as a formal discipline. Secondly, we will examine the purpose of medicine. Its purpose is to restore a satisfactory state of well being if possible. Thus, we will examine the concept of health and disease. Thirdly, we will look at the structure of medicine. Its structure is that of a relationship between physician and patient. Consequently, we will look at these two roles respectively.³

My investigation into these elements will be somewhat brief. I will discuss them only to the extent necessary to make the general point of this chapter, viz., medicine as we know it necessarily uses persons. I think this point can be fully appreciated only if the reader has a sufficient grasp of the significant factors at play in the interaction between physician and patient.

Medicine as a Discipline

Edmund Pellegrino and David Thomasma define medicine as a "craftsmanship of healing"⁴ and, as such, it "is a habit of practical understanding refined and perfected by experience in dealing with patients."⁵ The motivation of

³Ibid., p. 65.

⁴Ibid., p. 79.

⁵Ibid., p. 59

this craft is compassion.⁶ If compassion is genuine it is shown or expressed. The discipline of medicine helps make this expression a genuine possibility. The discipline of medicine provides a body of knowledge, an epistemological foundation, for the expression of compassion. This epistemological foundation is found in the various academic subjects employed in the teaching of the craft, e.g., biology, chemistry, pathology, anatomy, etc. Medicine is interlinked with these scientific enterprises in an inextricable manner.⁷ These sciences yield an understanding of the body, or relevant physiological states of portions of the body which enables the practitioner of medicine to think he is justified in offering help to the patient. Without such an epistemological foundation, there would be nothing to classify the gestures made by physicians as therapeutic or professional. Further, the epistemological foundation provides the craftsman with a starting point for performing the compassionate act.

This compassionate act takes place in the context of a "clinical interaction"⁸ between patient and physician.

⁶Ibid., p. 65.

⁷Stephen Toulmin, "Concepts of Function and Mechanism in Medicine and Medical Science," in Philosophy and Medicine, Vol. 1, Evaluation and Explanation in the Biomedical Sciences, eds. H. Tristram Engelhardt, Jr. and Stuart T. Spicker, p. 51.

⁸Pellegrino and Thomasma, p. 63.

The clinical interaction between professional and client makes the event a medical one.⁹ It is medical by virtue of the fact that the professional brings with her a body of scientific medical knowledge that enables her to do something potentially therapeutic with regard to her compassionate motivation.

The Concept of Health and Disease

What is it that the medical professional or craftsman attempts to do? What is the goal of his compassionately motivated clinical intervention? The purpose is to achieve an individualized satisfactory state of well-being.¹⁰ In other words, health is the ultimate goal sought.

There is a significant body of philosophical literature dealing with the concepts of health and disease. One of the central issues in the literature deals with the status of the terms "health" and "disease." There is a debate as to whether the terms are fundamentally evaluative or descriptive. I will hold, for reasons that should be evident to my readers by now, that these terms are evaluative. I do not plan to give an extended defense of this approach as it is not the purpose of this chapter to enter into the debate on the matter. Instead, I will rely largely on Engelhardt's account of the nature of disease.

⁹Ibid., p. 65.

¹⁰Ibid.

A disease is indicative of something problematic with a person's well-being.¹¹ A disease is not a physical entity.¹² But since disease does make reference, in part, to physiological states there is often the tendency to equate disease with those states. But notice that I said disease indicates that there is something problematic with respect to a person's well-being. Obviously, well-being is an evaluative concept. As such, it demonstrates that there are some basic value-judgments in medicine. Human well-being, understood as the capacity for rational, free action, is postulated and conditions, be they physical or psychological, are evaluated with regard to their relationship to human well-being. Do they interfere with this well-being in a physiological or psychological sense? If so, we classify them as a disease.

H. Tristram Engelhardt, Jr., shows that there are three criteria used in identifying diseases. These are

¹¹I am following Engelhardt's account of disease as developed in "The Roles of Values in the Discovery of Illnesses, Diseases, & Disorders" and "The Disease of Masturbation: Values and the Concept of Disease" in Contemporary Issues in Bioethics, pp. 59-63, and "Human Well-Being & Medicine: Some Basic Value-Judgments in the Biomedical Sciences" in Biomedical Ethics, eds. Thomas A. Mappes and Jane S. Zembaty (New York: McGraw-Hill, 1981), pp. 213-222.

¹²cf. Christopher Boorse, "On the Distinction Between Disease and Illness" in Contemporary Issues in Bioethics, pp. 64-73, for a defense of the view that disease is a descriptive term.

teleological, algesic, and aesthetic criteria.¹³ The teleological evaluative judgments we make with regard to disease refer to certain functions we consider as proper to persons. These functions concern the goals persons should be adapted to achieve. For instance, blindness can be seen as a disease because sight is considered to be a proper human function. Someone who lacks this function has his or her well-being impaired. Algesic judgments refer to those states deemed to be painful, when that pain is not essential to a proper human goal. Hence, migraine headaches count as illness¹⁴ whereas the pain associated with childbirth or teething is not. The examples indicate that pain is an undesirable condition of persons which usually interferes with rational free agency. If the pain is severe enough, all else pales in significance for the individual except for the alleviation of pain. Only when the pain is diminished is the capacity for individuality, i.e., rational free agency, restored.

Finally, we make aesthetic judgments with regard to disease. Disease judgments made with respect to aesthetic criteria are perhaps the most difficult to justify. We classify polydactylia a disease because we judge five fingers per hand to be the proper form or appearance of the

¹³Engelhardt, "Human Well-Being," pp. 219-220. The following examples are Engelhardt's.

¹⁴I am equating disease with illness, even though it may be unwise at times to do so. cf. Boorse.

human hand. But is the presence of hair the proper appearance of the adult male head? Is it of the female? If a person's ears exceed a certain size, does that person have a disease? In other words, we consider some physical states to be deformities. But it is difficult to know always when we are justified in our considerations.

The main point to be made with regard to the concept of disease is that it is inherently dependent upon our evaluation of human well-being. Depending on what we consider human well-being to be, certain states will detract from that well-being. I mentioned earlier that these states could be either physical or psychological. I have already given numerous examples of physical diseases. I think it is easy to see how psychological conditions could be classified as diseases. Hallucinations have adverse teleological affects on a person. To the extent that a person's ability to function as a rationally free agent is disturbed by the presence of hallucinations, the disturbing effect of the hallucinations are seen as undesirable and unhealthy, at least by the psychotherapist. Consequently, the therapist looks for ways of dealing with or managing those hallucinations so that the diminishing effect the hallucinations have on the person's capacity for rational free action will be done away with. If the means selected involve

physiological factors, e.g., drug therapy, then the treatment is medical.¹⁵

Then, to call a physiological or psychological state of affairs a disease is to classify it as being bad in a teleological, algesic, and/or aesthetic sense.¹⁶ But the classification of a state of affairs as a disease always involves more than the state itself. If the physiological and/or psychological states of affairs were all that were involved, there would be no basis for distinguishing between these states with regard to health and disease. The disease label results from an evaluative judgment that says that a given state is bad with regard to human well-being. Since classifying physiological and/or psychological states of affairs involves value judgments, the concept of disease is relational in nature. Thus, diseases are not independent entities in the material world as common sense might suggest. I stated earlier¹⁷ that there are no independent objects in the world. This applies, as well, to disease. We see that classifying states of affairs as diseases depends upon some very basic values held by society and individuals.

¹⁵There is a great deal of debate as to whether mental illness ought to be in the domain of medicine. I would like to avoid that debate. I only make the point that if physiological facts are involved, e.g., brain damage, drug therapy, etc., then medicine is involved as well, either rightly or wrongly. cf. Thomas Szasz, The Myth of Mental Illness.

¹⁶Engelhardt, "Human Well-Being," p. 219.

¹⁷See p. 9 above.

For example, masturbation was considered a disease in the nineteenth century because physicians evaluated physical states in light of the assumption that what was bad for one's soul was bad for one's health.¹⁸ They held, correctly or incorrectly, that masturbation was bad for the soul. Consequently, when patients were seen to be suffering from a large range of physical disorders, e.g., dyspepsia, irregular heart action, consumption, etc., and when these patients were discovered to masturbate, the medical community inferred a cause and effect relationship between the immoral behavior and the medical symptoms.¹⁹

Today, we could say that physicians evaluate physical symptoms in light of the assumption that what is bad for one's body is bad for one's health. One's blood pressure is "high" if it deviates significantly from a statistical ideal. This statistical ideal is not value free. It is value laden. Physicians value normalcy with regard to blood pressure, weight, blood counts, and so forth. The soul is no longer fundamentally important. While the human psyche is important, it is the body which is fundamentally important. And just as there was a proper or ideal kind of soul, i.e., virtuous, sexually pure, etc., so is there a proper kind of body to have. If one has the proper kind of body,

¹⁸Engelhardt, "The Disease of Masturbation."

¹⁹Ibid.

one ought not to suffer from disease. If one is good to one's body, one's body should reciprocate good. This is the starting point of twentieth century medicine. Previously, the starting point was that if one is good to one's soul, one's soul will reciprocate good. There is no escaping starting points, or values, in deciding what states of affairs are diseases. And these values are inextricably associated with good and bad. Health is good and disease is bad. Good and bad are expressed in terms of some fundamental value.

What conclusions are to be drawn concerning disease? First of all, disease is not an objective entity in the world.²⁰ A disease may involve a physiological state of affairs. However, it need not do so. Secondly, it follows that the concept of disease does not admit of a single, universal definition.²¹ Rather, one chooses concepts depending on values one holds concerning the world.²² The fundamental value we are concerned with in this essay is human well being understood as the capacity for rational free agency. States of affairs may impede or interfere with this capacity and are thus to be classified as diseases. Absent the presupposed value of rational free agency, the classification

²⁰Ibid., p. 59.

²¹Ibid.

²²Ibid.

of disease would not necessarily follow. We use three different criteria, teleological, algesic, and aesthetic, to identify different types of states of affairs, physiological and/or psychological, as diseases.

One final topic needs to be addressed concerning the concept of disease. This topic is the subjectivity of disease. Typically, individuals, or their family members, judge for themselves whether or not one is sick and thus in need of a physician.²³ We all know that individuals vary. Indeed, evidence shows that different individuals can have identical diagnoses yet not all be sick²⁴ (or, at least not in the same way). Two points need to be noted here. First of all, disease is suffered physiologically on an individual basis. Individuals have their own particular bodies. Thus, the suffering may vary from body to body. Secondly, we must remember that disease involves a perception on the part of an individual. One perceives oneself or a family member as sick. Hence, the aid of a physician is sought. Treatment is not offered out of a scientific interest alone. Rather, it is a response made to a suffering person.²⁵

²³Engelhardt, "The Roles of Values," p. 75.

²⁴cf. John L. Coulehan, M.D., "Human Illness: Cases, Models, and Paradigms," The Pharos (Spring 1980) pp. 3-8.

²⁵Engelhardt, "The Roles of Values," p. 75.

One may disagree with my contention that disease is a perception on the part of the individual. The critic would want to claim that if the physiological state of affairs common to lymphoma, for example, are present, then that person has cancer whether or not she perceives herself as having cancer. Physiologically speaking, this is true. But I would contend that the disease of cancer is not present in the full sense until it is perceived by the sufferer, i.e., patient. Cancer is more than the physiological conditions characteristically associated with it. The disease of cancer in the full sense is a phenomenological entity. If one has cancer in the full sense, one realizes one has a potentially fatal disease. This realization in turn, affects the degree and nature of suffering on the part of the patient since suffering consists of more than physiological factors.

Prior to diagnosis, the same physiological state of affairs is present in the body as is present subsequent to diagnosis. But prior to the diagnosis, the person is aware only of the presence of certain symptoms, e.g., lethargy, localized pain, ill-defined anxiety and fear, etc. The person may expect that something is wrong, yet she does not know what it is. Once she is made aware, the symptoms change in that they acquire a specificity and meaning. The symptoms are now known to be potentially life-threatening. Prior to diagnosis, the symptoms were not so known. They

may have been suspected to be potentially life-threatening, but they were not known to be so. It is in this sense that one does not have a disease prior to perception of the disease by the sufferer. Of course, the physiological states are constant throughout, but a disease in the full sense involves both the presence of the physiological and/or psychological states of affairs and the perception of these states as harmful to human well-being by the afflicted individual.

One last point needs to be briefly noted with regard to the role of the individual and disease. Statistics show that a number of social factors play a determining role in which individuals get sick and which do not. For instance, marital status, religious beliefs and the number and closeness of friendships all play a role in determining whether or not a person may get sick.²⁶ This suggests that there is not a necessary cause and effect relationship between the presence of physiological states and the presence of disease.

Then, it should be clear to the reader that disease is not solely involved with material factors. The concept of disease is a value-laden one. If the purpose of medicine is to combat disease when possible in order to achieve a

²⁶cf. Leon Eisenberg, "What Makes Persons 'Patients' and Patients 'Well'?" in The American Journal of Medicine, August 1980, Vol. 69.

satisfactory state of well-being, then the physician is involved in more than the measure and manipulation of physiological body states.

What is the connection between this section on the nature of health and disease and the previous one concerning medicine as a discipline? We must remember that the motivation of medicine is compassion. Further, since medicine is a profession, that compassion must be shown in a professional as opposed to a charlatan fashion. If the compassionate acts of medicine are to be effective in combating and controlling disease it is obvious that the nature of disease in general must be understood as well as the characteristics of specific diseases. This is what the discipline of medicine tries to do. Using the various tools and schools of science, e.g., research, anatomy, biology, etc., an understanding is approached.

Obviously, the understanding achieved will be less than complete. Disease, in its full, phenomenological sense, is simply too complex to allow for generalizations to the degree desired. The physiological facts of disease, on the other hand, do allow for sufficiently accurate generalizations. Given the epistemological and methodological foundations of biology, chemistry, pathology, etc., medicine can understand and differentiate between the various pathophysiological states involved in disease. Further, it is in

a position to make adequately accurate connections between pathological states and therapies.

What is the method of discovery for the linkages? It is primarily research. Once these connections are discovered, how are they put to effective use? This is done primarily through training. Physicians are trained in the course of their education by observing faculty members treat disease and by treating disease themselves in a supervised setting, i.e., teaching hospital. The important point to be noted here is that the use of living human bodies is necessary in both areas, i.e., research and training. A medical student may be taught human anatomy initially through the use of illustrated textbooks and human cadavers. But the final test of proficiency is passed by the student when he shows anatomical familiarity with a living human body as shown through patient care in a teaching hospital or clinic. The same is true with regard to research. New treatments and drugs are first conceived and developed in the lab or classroom or both. Then testing of these techniques or drugs begin, again in the laboratory. If that new technique or drug is ever to be labeled therapeutic, though, it must be proven to be so. The only way it can be so proven is to pass the final test of proving its efficacy on living human bodies.

Hence, the development and availability of compassionately motivated professional interventions in disease

processes involves necessarily (as modern medicine is done) the use of persons. This point may be obvious. It bears noting nonetheless.

The Roles of Physician and Patients

We can now turn to the final issue of this chapter. Thus far, we have discussed the motivation and purpose of medicine. Now we will briefly examine the structure of medicine. Medicine's structure is that of a relationship.²⁷ It is primarily a relationship between a physician and a patient. (Many would argue, correctly, that the relationship is between a patient and a health care team consisting of a physician or physicians, nurses, dieticians, physical therapists, etc. The physician is usually recognized as the head of the team, though. I will limit my discussion to the physician since this will allow me to make the points I need to make in this section.)

Let me begin by restating a point previously quoted from Pellegrino and Thomasma. They state that medicine "is a habit of practical understanding refined and perfected by experience in dealing with patients."²⁸ This refined habit of practical understanding occurs within the context of a practitioner-client relationship. The client, i.e., patient, is in need of advice, help, comfort, etc., with

²⁷Pellegrino and Thomasma, p. 65.

²⁸Ibid., p. 59.

regard to her health. The physician is sought as the one best capable of providing the service or services desired.

The physician is perceived and sought after as a healer. The physician heals, or restores, the capacity for rational free agency and hence individuality if possible. This occurs when medical treatment is fully successful. Sometimes the physician restores a minimal level of functioning only. Other times treatment is a failure. Nevertheless, the role of the physician remains the same. He or she is generally the one turned to when a person enters the sick role.

Society generally has faith in physicians. They are competent, as a rule and to the degree possible, to restore health due to their training and expertise. We recognize the limitations of the profession. Yet, at the same time, we expect the profession to overcome these limitations if at all possible. I think it is safe to say that we desire to decide the moment of death for ourselves rather than having death decide for us (no hypostatization intended). Physicians are aware of persons' desires to postpone the moment of death and work toward this as a general goal. In actuality, they work towards more specific goals, e.g., managing hypertension, curing diabetes, etc. These are the immediate threats to our capacity for individuality. (This point will be discussed in Chapter Four.)

Then, the goals of both physicians and patients coincide with one another. Together, the two groups enter into relationships on an individual basis in order to attempt to achieve a specific goal. Persons dislike diseases and they seek the help of a trained, skilled professional in order to prevent the occurrence of disease or to obtain treatment for a manifest disease.

The role of the physician, then, is that of a craftsman experienced in healing. The physician is experienced at treating patients. This treatment, in turn, presupposes research and training in that a physician is a licensed practitioner of medicine. So the physician is dependent upon the prior use of persons she has encountered in her past training and in her past treatment of patients subsequent to her training as well. Physicians may always potentially use their patients as means of education for the future practice of their profession.

In the next chapter I will argue that the role of the patient ought to be expanded, in principle, to allow for the use of patients as non-therapeutic research subjects. This role expansion will recognize formally what is already the case. Patients are presently used in order to benefit others even in the examination room. Of course, this use is therapeutic. That is why it is necessary to talk about an expansion of the role. The role must be expanded in order

to establish the non-therapeutic use of persons by medicine. But the point to be noted here is that the use as a means already occurs constantly in medicine. Hence, use as a means should not be viewed as anything new.

Summary

I have talked about medicine, both as a discipline and as a practice. Medicine in both respects is concerned with disease. I have argued that disease is not a purely physiological entity or state of affairs. Rather, it is a value-laden concept we apply to various physiological and/or psychological states of affairs. We have seen that medicine is motivated by compassion for the purpose of achieving a satisfactory state of well-being. All this occurs within a clinical event best understood as a relationship between the client and the practitioner.

But the main point of this chapter is to draw attention to the fact that the relationship between the concerned parties which takes place in the guise of treatment, if at all possible, presupposes the use of persons. Medicine is a profession. As such, it uses humans in order to discover and treat patho-physiological body states. Physicians, as practitioners of this profession, of course, use persons by virtue of their profession. The use of persons has become central to the practice and discipline of medicine. This is the point to be remembered in this chapter.

This chapter has been purely descriptive to the extent possible. Moral issues have not been the main focus in this chapter. The stage is now fully set, though, to turn to the moral issues directly. The question before us is whether or not an individual has a general obligation to participate in some forms of non-therapeutic research. As preliminary work to this discussion we have analyzed the nature of the individual in society (Chapter One), the proper theoretical approach to use in settling moral disputes (Chapter Two), and the nature of medicine in society (Chapter Three). This now enables us to address the moral disputes surrounding the contention that individuals are obligated to make their bodies available under limited circumstances to medicine.

CHAPTER IV

THE INDIVIDUAL AND MEDICAL RESEARCH

Thus far I have argued that the individual is a derivate of society and that the goal of society ought to be to provide the individual with the opportunity for achieving individuality. In order to get from this last point to the existence of an obligation to participate in some forms of non-therapeutic medical research, three points must be established. First of all, I must show that health stands to contribute to the opportunity for achieving individuality. Secondly, I must establish that we have binding obligations to perform beneficent acts. Thirdly, I must show that the obligation to perform a beneficent act, i.e., to participate in some forms of non-therapeutic research, does not infringe unjustly upon the interests of the individual. In other words, the good to be sought, viz., health, must be at least commensurate with the costs. In addition, I will briefly discuss the separate issue of fairness with regard to non-therapeutic research. Finally, I will address the criticism that states that making participation obligatory deprives persons of the altruistic rewards that follow from participation.

Health and the Individual

Health most certainly contributes to an individual's chances of achieving individuality. If one achieves

individuality of one has defined oneself in the fullest sense of the word. One has started with, and recognized, the determining facts and forces one is subject to. From there, one has proceeded to place oneself in relation to all else. One has differentiated oneself from all else, yet one continues to realize the dependency one has on all else. This state of affairs is a worthy achievement. It is an achievement requiring both knowledge and opportunity of action.¹ Health is related to both of these prerequisites, as I will show.

But first I must define health. I stated in the last chapter that health is an evaluative term. It is evaluative with regard to the human good, viz., individuality. A certain amount of health is a necessary condition of individuality.² If knowledge is a prerequisite of individuality, then one must have the mental and psychological capacities to reason and be functional enough to exercise those capacities. If the opportunity to act is a prerequisite of full individuality³ then one must have the physical

¹See pp. 48-50 above.

²Daniel Callahan, "The WHO Definition of Health," in Biomedical Ethics, eds. Thomas A. Mappes and Jane S. Zembaty (New York: McGraw-Hill, 1981), p. 210.

³I use the term full individuality simply to reflect the fact that not only is individuality an achievement, but it is an achievement that admits of degrees. A paraplegic can achieve individuality, but the means, i.e., range of activities, open to the paraplegic for achieving

capacity to engage in a broad range of activities. Hence, I will define health as the state of possessing a set of at least adequate psychological and physiological capacities necessary for performing essential human activities that serve as means for achieving individuality.⁴ So, we see that health is, by definition, a necessary condition of both knowledge and opportunity of action. It follows that at least a minimal degree of health is a necessary condition of individuality.

Further comments are in order with regard to health. It obviously varies from individual to individual. One person can suffer more, and thus have a more diminished capacity, from diabetes than another person. Also, health, or the lack of it, is oftentimes the result of the deliberative choices of persons. Further, health, or the lack of it, is often externally determined, e.g., as in the case of genetic diseases. Since the effects of physiological and psychological conditions vary from individual to individual, we should not search for one universal standard, i.e., statistical norm, of health. Since health may vary, some people could achieve individuality without enjoying

individuality are much less than the means available to the non-para-plegic, all other factors being equal. The broader the range of activities available to the person, the healthier the person is.

⁴cf. Engelhardt, "Human Well Being and Medicine," p. 215. Engelhardt defines health as a physical or psychological condition of humans that enables them to engage in the range of activities proper to them as humans.

such a norm. The paraplegic is such an example. Secondly, since an individual's state of health is often the result of deliberative choices, a standard of health cannot be imposed or mandated for the individual. This could interfere too greatly with the liberty of the person.⁵ (The issue of liberty will be discussed later.) Nevertheless, it is hoped that an individual will seek to achieve and/or maintain a sufficient degree of health for achieving individuality. The third point to be noted here is that a given person's health, or lack of it, is often wholly externally determined. People are often born with diseases. Diseases are often acquired through no fault of the individual.

These three points serve to show that, even though a minimum degree of health is a necessary condition for individuality, society's power is limited with respect to bestowing health to people. Even though society is obligated to do all it can within reason to provide the opportunity, and thus the prerequisites, for individuality, society is powerless to grant health to everyone. Health is too elusive for that given the three points noted above. Consequently, it seems that any arguments attempting to establish a right to health are off target. It would be impossible to

⁵We may decide to penalize a person for neglect and abuse, e.g., higher insurance premiums for smokers. But this is probably as far as one can go. The point is that we could, and should, encourage people to be healthy. But we cannot make health mandatory, even though certain health maintenance steps may be mandatory, e.g., vaccinations.

respect such a "right" just as it would be impossible to respect a "right" of a person to have an IQ of 120. The most that can ever be said is that society has an obligation to provide access to health care to everyone on a fair and equitable basis. I do not intend to address this issue, though. Instead, I will simply reason on the assumption that health care is generally available (although probably not on an equitable basis) to the population of this society. Individuals expect it and the institution of medicine is there to serve that expectation.

The institution is also duty bound to develop and provide safe and effective treatments and cures for infirmity, disease, and illness.⁶ If this were not so, medicine and those it employs could not justify its continued existence and public favor. Thus, in order to continue to enjoy the respect of and use by persons, medicine must perform research on persons, as was mentioned in the previous chapter. The point to be made in this section, though, is that research will not guarantee health for anyone. As I said earlier, health is simply too elusive.

Furthermore, medical research is neither a necessary nor a sufficient condition for the discovery of new treatments and cures of specific diseases or maladies. The

⁶Carleton B. Chapman, M.D., "On the Definition and Teaching of the Medical Ethic," in The New England Journal of Medicine, September 20, 1979, p. 632.

serendipitous discovery of penicillin is a good illustration of this, even though the discovery occurred in the context of medical research. Nevertheless, research is implemented by the medical community as the prominent rational means of making the desired discoveries. Thus, there is an established consensus in the medical community concerning the need of medical research in the effort to improve health. There will always be some benefit derived from research.

The derived benefit is primarily knowledge. Research is performed in order to investigate various matters of concern. The knowledge gained is always useful at least to the extent that the researchers learn either whether or not the line of research ought to be continued or if the research was properly designed. If the researcher learns nothing else, he at least learns that his time and resources can be better utilized. So, research necessarily yields knowledge and this knowledge will make at least an indirect contribution to medicine. Since it is the purpose of medicine to understand and promote health, research necessarily contributes to health, even though any particular contribution may be slight, even trivial. Thus, even though research is neither a necessary nor a sufficient condition for the discovery of new specific medicinal cures and treatments, it is the most rational approach to new cures and treatments available to any medicine that values progress and improvement.

At first glance, the conclusion of this section seems ironic. Health is a necessary condition of individuality. Society is obligated to provide persons with the opportunity of achieving individuality. Thus, it would seem that society is obligated to provide health for everyone. Yet, as mentioned, this is not possible given the nature of health. Consequently, we can only expect, or demand, access to health care of a certain quality. Health care is improved through research, even though research is neither a necessary nor a sufficient condition for improved health care. The most that can be said for research is that it necessarily yields knowledge. This knowledge can yield trivial or significant results. The overall conclusion, then, is that research offers the best alternative to improving the health care, and hopefully the health, of persons. Since this is the case, it seems at least beneficial to encourage research, even in the absence of a guaranteed positive result.

Binding Beneficent Obligations

Why are we morally obligated to do what is beneficial i.e., participate in some forms of non-therapeutic medical research? Why would refusers be blameworthy? Basically because the refuser is acting against the interests of individuality. We must keep in mind that individuality is the fundamental moral value since it is the chief good of personhood. We must also remember that a certain state of

health is necessary for individuality. If one lacks the psychological or physiological capacities necessary for achieving individuality, then individuality remains inaccessible for the person. In some cases, these capacities can be restored through research. If a child suffers from cystic fibrosis, and since the disease deprives the child of the chance to achieve individuality, then research which led to a cure would obviously restore the capacities necessary for achieving individuality. Hence, in these sorts of cases, i.e., where one's health is diminished in areas where research could potentially restore it, research is most likely essential to providing the possibility for individuality to a class of individuals. (I say most likely since medical research does not necessarily make a contribution to the health of persons.) Research may provide the means by which the opportunity for health, and thus the possibility for individuality, is made available. Further, it also may enhance the individuality of persons as I will explain shortly. The possibility of both providing and enhancing individuality through research is sufficient to compel medicine to perform the research and both are sufficient to obligate persons to participate in the research, although obligations to save lives rather than improve them may be more binding in some cases.

But why is enhancement a morally compelling issue? If the matter was left with the opportunity of individuality alone, then the instances of morally required research would be greatly limited. Diseases which are fatal would obviously need to be researched. Cystic fibrosis, diabetes, and cancer would have to be researched, and if morally acceptable non-therapeutic experiments could be designed, then there would be a general obligation for persons to participate in them. But what could be said for research on diseases such as mild hypertension, even psoriasis? These may not threaten the lives of individuals, but they do restrict the activities of persons.

The state of health or illness of a person is part of the facticity of that person.⁷ But these facts may be subject to change. Consider an individual who suffers from psoriasis universalis to such an extent that she is reluctant to show herself in public because she appears freakish to others. Her life is not endangered. However, her individuality is severely constrained. Many opportunities and activities are denied her. While it would still be possible for her to realize many of her potentials, if her condition were cured her potentials would expand tremendously. So, medical research can alter the facticity of a person's life. And we should not limit the obligation to attempt to alter

⁷See Sartre, Being & Nothingness, Part Two, Chapter 1, section II.

this facticity to the realm of potentially fatal diseases. We should broaden it to include debilitating diseases. In this manner, the value of individuality is fully recognized and sought. As I said, an obligation to participate in non-therapeutic research provides the means by which the opportunity of health, and thus the possibility for or the enhancement of individuality is made available.

Such is the first step in establishing an obligation to participate in some forms of non-therapeutic research. Not to do the research would wrongly deprive individuals of their opportunity to achieve individuality. If research is not performed, a whole class of persons is deprived of the possibility of individuality or their individuality is unnecessarily restricted for a length of time that would otherwise not be necessary if the potential research proved beneficial. For example, if research project A provided a cure for disease Z, yet due to an avoidable lack of research subjects it took ten years rather than five years to complete, then individuals who suffered from Z did so unnecessarily for the last 5 years of the study.

Put simply, the good to be gained, viz., the possible likely contribution to the achievement of individuality, is too great to be ignored. It would be wrong for society not to attempt to make this contribution. Since it would be wrong for society not to attempt to make the contribution it

would also be wrong for individuals not to recognize an obligation to aid society in making such a contribution. But why is the individual so obligated?

As just mentioned, the good to be attained is morally compelling. Here, my reasoning is no different from standard utilitarian reasoning. (I indicated that this would be the case in Chapter Two.) However, more comments are in order. I argued in Chapter One that the content enjoyed by any particular individual is social. Hence, the good of individuality has its roots in society. It is derived from and made possible by society. My individuality comes from society in that society gives me certain things which makes it possible for me to achieve individuality, viz., knowledge and opportunity. In order for society to provide me with these goods, individuals must provide certain materials to society. For example, individuals must provide time, labor, and financing to society if society is to distribute education to persons. By the same token, since health preserves, protects, and/or promotes a person's opportunity for achieving individuality and since health is served by medicine which depends on human research in its attempt to improve medical treatment, persons must recognize an obligation to contribute that portion of what medicine needs from individuals in order to protect, preserve, and promote health. Then, society is able to fulfill its obligation to provide persons with the opportunity to achieve individuality.

The reader must note that any time society is under an obligation it follows that individuals are obligated as well. Materially speaking, society is the aggregate of all of us. Thus, if all of us are obligated to do something then each of us must play a role in meeting that obligation. Many times the role each of us plays is to have the responsibility and/or obligation delegated to particular individuals or groups. In this case, medical professionals, as I will argue, are the ones delegated the role to select the individuals who ought to serve as research subjects much as legislators are delegated the authority to determine the individuals who are to serve as taxpayers.

But of course, there are limits to the obligation to serve in non-therapeutic research. It does not follow from the foregoing that we have an obligation to perform all conceivable medical research. In many cases, it is obviously unwise to do applied medical research simply because enough is not known due to a lack of basic research to design the applied research. Also, our resources are limited. Society can only devote so much money and manpower to medical research.⁸ Given these scarce resources, research must be

⁸I realize that this in itself is a moral issue. It may be better to spend less money on small business loans and more on medical research. This is a fascinating public policy question of immense importance but it lies outside the scope of this study. Also, there are moral public policy questions restricted to medical research. Is it morally proper to spend as much money and manpower on cancer research as is presently the case at the expense and neglect

limited. We are powerless to do all the research that may be desirable. The point to be made here, though, is that bodies should not be a scarce resource in some types of non-therapeutic medical research. The lack of bodies in such types of research would be morally inexcusable.

However, even if there were no lack of knowledge or resources, it still would not follow that we would be morally required to perform all initially desirable research. There are times when the costs to the participants of the research are simply too great. We are not obligated to do as Jesus exhorted the faithful to do with regard to the poor.⁹ We are under no obligation to sell all we own and donate the earnings to the poor. We need, and are entitled to, a certain degree of monetary resources by which to realize our desires and life projects. Once we have acquired these resources through our own efforts they are, for the most part, ours. Of course, taxation rightfully takes some of those resources. This is justified given the principle of beneficence included by the concept of individuality. However, this beneficence, i.e., taxation, must be tempered by a sense of justice and fairness.

of other diseases? Is it morally justifiable to spend our resources on interventionary research at the expense of preventive research? Again, these are important moral questions but they do not speak directly to the issue at hand.

⁹See St. Matthew 19:21.

Thus, taxation should not take so much as to deprive us of the opportunity of ever achieving individuality. It is morally wrong for a government to enslave its population in such a manner.

By the same token, medicine cannot exercise control over our bodies to the extent that we are deprived of the opportunity of individuality. Researchers cannot confine persons for weeks or days at a time in order to perform some needed research. This restraint interferes too greatly with the basic human value, individuality.

We must remember what the justification is for the research. We obligate persons to participate in some types of non-therapeutic research in the hope that the research will contribute to someone's opportunity for achieving individuality. If the research is not done, the chance of those affected persons not having the opportunity are significantly diminished. But if we significantly diminish¹⁰ or deprive a research subject of his capacity for individuality as a result of the research, then that research would be unjustified. Our goal is not to deprive one person of his capacity for achieving individuality in order to provide it for another. We must not deprive Peter in order to provide

¹⁰I realize that the phrase "significantly diminish" is ambiguous. I am not prepared to offer a precise definition here. Rather, it is hoped that the various examples to follow will let the reader know the meaning of the phrase.

for Paul. Instead, the claim is made that in some cases Peter ought to help Paul.

But, just as there are social responsibilities which make demands on the lives of particular persons if these responsibilities are to be met, there are social privileges as well, i.e., rights. Rights are often treated as if they are natural attributes much like hair color or intelligence. But they are not. They are permissions granted by society to its members.¹¹ Individuals have certain privileges that we cannot interfere with. If society deprived an individual of her capacity and/or opportunity to achieve individuality, society would be guilty of violating her rights. Society is duty-bound to respect the privileges and permissions it grants its members. Otherwise, society is unjust and hence immoral. As I said in Chapter Two, society should place a minimum of restraints on people and provide for a maximum of liberty while still meeting its main goal, viz., individuality. Rights are efficient tools for balancing and determining these minimum and maximum restraints and liberties. I further contended in Chapter Two that justice was a necessity of society. In order to provide for justice, society utilizes the concept of rights in evaluating the demands it places on individuals. Consequently, society must weigh

¹¹Robert L. Armstrong, "The Right to Life," in Biomedical Ethics, eds. Thomas Mappes and Jane Zembaty (New York: McGraw-Hill Inc., 1981), 433. Also, see footnote one, Chapter One.

its obligation to benefit Paul in light of its obligation to protect and respect Peter. By properly weighing these obligations, society can claim that Peter ought to help Paul in some cases.

The concept of rights seems to be the most efficient tool available to society in its obligation to protect Peter's opportunities for achieving individuality. When society makes demands on persons, as it must, rights function as "caution signs" to ensure that the individual is not abused. But rights do not function as "stop signs." To say that a person has a right to self-determination is not to recognize absolute sovereignty. (I will return to the issue of sovereignty in Chapter Five.) Rather, the right ought to be understood as indicating that what is being used as a means is at the same time an end. Thus, society must exercise extreme caution so that the use of the person does not jeopardize his or her chosen end(s).

The reader should recall the main points of Chapter One. My discussion of rights simply reflects my contention that society is the source, backdrop, and context of all the attributes of persons. Further, since the chief good a person can enjoy is the achievement of individuality it follows that person's must be able to pursue such a goal. As argued earlier, the pursuit of the goal presupposes that society provides certain goods and refrains from constraining the individual too greatly. Rights perform this latter

function. But rights do not serve as barriers around individuals that isolate the individuals from all else.

Rather, rights serve to control entry into the life of an individual.

Which cases of medical research would constitute "controlled entry?" The answer brings us to the second point of the argument that establishes the obligation to participate in some research. The cases are those where the cost to or sacrifice made by the person is consistent with respecting his capacity for individuality. Non-therapeutic research which does not destroy nor diminish nor pose the threat of destroying or diminishing the subject's capacity for achieving individuality would be in principle obligatory provided that the research will contribute to the capacity of persons to achieve or enhance individuality. Here the two points come together. One: the possible benefit of the research provides us a reason for performing it; two: the expense of doing it is consistent with the obligation to respect persons' rights to achieve individuality. Thus, there is no good reason not to do the research. In other words, the benefit provides a cause for doing the research and the lack of a threat to the capacity for individuality of the subjects shows that there is no countervailing reason for not doing the research. Given these two

reasons it follows that medicine is justifiable in obligating persons to participate in such types of research as meet the criteria just listed.

The institution or professional group that has dominion over this obligation is really inconsequential to the obligation in and of itself. Let me briefly mention, anyway, why I place medical professionals in charge. I assume that they are best suited to determine the most fruitful areas of research. Further, they are the ones, I assume, to be most aware of the logistical problems and solutions relative to the research projects. So, I place medical professionals in charge. But this is not to say that they should be given complete autonomy. Since they are the ones best qualified to see if a research project meets the first criterion, viz., the promise of possibly contributing to a class of persons' capacity for or enhancement of individuality, it does not follow that they are the ones to determine if the second criterion is met, viz., the need to respect the rights and privileges of persons. The first criterion is primarily a medical one. The second is a moral one. Medical professionals have no special moral expertise. Hence, their autonomy with regard to research projects is limited by the necessity to protect the capacity for individuality of the research subjects. It is the burden of society at large to see that the second condition is met, just as it is the burden of society at large to monitor all

professions to see that they do not abuse or neglect their authority and responsibilities.

Claiming that we have an obligation to act beneficently in some cases is a remarkably non-controversial moral claim. Beneficence is at the heart of utilitarianism. Even Kant said we ought to be beneficent when we can.¹² The controversy arises from a deontological perspective when I claim that we are duty bound and should not be swayed by our inclinations in some cases.¹³ My task in this section has simply been to indicate what cases are in fact binding cases.¹⁴ These cases are those where there is reason to believe a contribution will be made to the goal of individuality and the means of achieving that goal neither threaten nor diminish the participant's capacity for individuality.¹⁵

¹²Immanuel Kant, Fundamental Principles of the Metaphysics of Morals, in Classics of Western Philosophy, ed. Steven M. Cahn (Indianapolis: Hackett Publishing Company, 1977), p. 846.

¹³Ibid., p. 860, footnote 12.

¹⁴By binding cases I simply mean those where one is blameworthy if one fails to uphold one's obligation.

¹⁵The argument in principle establishes a whole range of obligations, e.g., contributing to education, employment, taxation, etc.

Binding Acts of Beneficence and the Interests of the Individual

A longstanding and significant criticism of my position is that it harms or fails to respect the interests of the individual who is placed under the binding obligation. I will deal in depth with a specific writer's criticism that my view does in fact interfere with the basic inviolability of the human person in the following chapter. In this chapter I just want to lay the groundwork needed to show that my view does not necessarily violate the interests or welfare of the research subject.

Let us begin by examining a hypothetical case of non-therapeutic research. Suppose a research team wanted to investigate whether or not there is any correlation between the amount of milk an adult drinks and his or her blood pressure. In order to have a large enough group of research subjects the research team contacts a few medical group practices in the community. The physicians agree to get all patients who have their blood pressure checked for diagnostic purposes to also fill out a very brief questionnaire concerning the amount of milk they drink on any given day.

Generally speaking, this example of non-therapeutic research does not violate the interests or the welfare of the research subject. What is the cost of the research to the research subject? There is a cost of time, perhaps five minutes or even ten minutes. There is also the divulgence of personal dietary habits. Do either of these costs harm

the patient? There is no physical harm involved. The loss of five or ten minutes may be construed as a harm in that it could be an inconvenience. If those ten minutes may cause someone to risk missing an airplane flight, then all should agree that that individual would be relieved of his or her obligation in that particular instance. Absent this kind of conflict, though, I do not see that any significant harm is involved. Will those few minutes spent filling out the questionnaire deprive the individual of her capacity for individuality? Clearly not. Will the individual be deprived of her ability to understand her position in the world? No. Will she be prevented from acting in light of her rationally made choices? Again, no, even though she may change some of her previous choices, e.g., she may drink less milk. At the most she may have to postpone her actions. She will arrive at the grocery store a few minutes late. If this is no major inconvenience, e.g., if the added few minutes will not cause her to get stuck in rush-hour traffic, then no harm to her person has been done.

We must remember that individuality is the chief human good. Hence, society must do all that is possible to make this a realizable good for everyone. Further, society must do all that it can to protect persons' capacities for achieving individuality. The foregoing example, and all similar examples that involve little or no risk, pain, or

inconvenience,¹⁶ does not involve society in any practices it should not be involved in or condone, i.e., the guidelines serve to protect research subjects since only a limited range of research is condoned. Further, assuming the research is potentially beneficial, it enables society to promote the possibility or enhancement of individuality for more people.

What other types of research are justified in my view? What are some other examples of non-therapeutic research that involves "little or no risk, pain, or inconvenience" and thus neither threatens nor diminishes a person's capacity for individuality? My position entails that persons are obligated to participate, i.e., persons are blâmeworthy if they do not participate, in a research project that requires that an extra 50 cc's of blood be withdrawn when blood is being drawn for therapeutic reasons. Here, there is no additional risk or pain. Any inconvenience would be in terms of time and that time could be measured in seconds! So, participation in this kind of research could certainly be obligatory.

I would contend that participation in research which involved the pain, risk, and inconvenience of venipuncture

¹⁶This description is taken directly from Richard McCormick "Proxy Consent in the Experimentation Situation," in Contemporary Issues in Bioethics, eds. Tom L. Beauchamp and LeRoy Walton (California: Wadsworth Publishing Company, Inc., 1978), p. 463).

would also be obligatory. Here, there is the very minor risk of infection. Secondly, there is the pain, both physical and possibly mental, of the needle insertion. Thirdly, there is the inconvenience associated with having the blood withdrawn. This inconvenience could be minimized by having a health care worker visit the subject if it proved too burdensome for the subject to visit the clinic, laboratory, etc. Further, this could be demanded on more than one occasion if need be. Assuming that the benefit is considerable, the small cost to the individual combined with the protection being afforded the individual, i.e., no significant costs in terms of risk, pain, and/or inconvenience, is not enough to make participation voluntary. Rather, it should be obligatory.

Of course, we want to exclude certain exceptional individuals. Some people may be directly afraid of the sight of a needle. Hence, we should respect their welfare and find more suitable research subjects. Nonetheless, the general populace should be seen as having the obligation under discussion. The exceptions will be few. However, the range of research justified in my view may be too narrow to please strong adherents of the research imperative. Some really promising forms of research involve more than a series of venipunctures. The reader must keep in mind, though, that the purpose and limits of the research are defined with respect to individuality. Society should do all

within reason to provide the capacity for achieving individuality to as many as possible. Further, society should do all within reason to restore or enhance the capacity of achieving individuality for those whose capacity is diminished due to a lack of health. Determining what is within reason is what is difficult. This is where I may be too conservative for some and surely too liberal for others. (I will address two such writers in the next chapter.) But if we cannot be precise in our determination of the balance between protecting the capacity of individuality and promoting that capacity, then I think we should err on the side of protecting the capacity. Hence, I insist that obligatory research involve only minimal risk, pain, and inconvenience. This approach affords me the conclusion necessary to argue against the truly conservative approach that claims obligatory participation in non-therapeutic research is wrong in principle. It is not wrong in principle, even though it may be wrong in practice more times than it is right.

The above is the groundwork needed to maintain and justify both the distinction between acceptable and unacceptable forms of obligatory non-therapeutic research and the foundation of the obligation to participate in such research. The view will be developed further in the next chapter. This section serves simply as an anticipation of a specific criticism.

Fairness

A different line of argument also supports the claim that persons have a general obligation to participate in some types of non-therapeutic research. In Chapter Three I stressed the point that medicine, at least progressive, conscientious medicine, presupposed the use of human bodies, both in training and research. All patients benefit from those who have been used by medicine in the past. It seems only fair for present patients to participate in research when the need arises--not to pay back past subjects but to assist medicine in its task of providing improved medical care for future patients. Medicine recognizes an obligation to make advancements in medical care. It is a simple dictate of fairness that we help medicine to meet this obligation in certain previously described circumstances.

Obligatory Research and Altruistic Reward

An important objection to my view often raised¹⁷ is that obligatory participation in non-therapeutic research is wrong or unwise not because it misuses the subject but because it deprives the participant of the altruistic reward that comes from voluntary participation. In order to assess this criticism, let us consider the example of donating blood. This example is not a case of non-therapeutic research, but it is analogous in the sense that an individual

¹⁷I very frequently hear this argument from students.

is allowing his body to be used in order to benefit someone else. If donating blood were to ever be made obligatory, then the claim is made that persons would be deprived of the benefits they presently receive from donating blood. They donate blood because it makes them feel good to voluntarily do something to help another person. The motivating factor is the personal reward the donor receives. If a voluntary act were to be made obligatory, the reward presumably would vanish as would the motivation. Hence, the desirability of blood donation diminishes. The same would hold true for those individuals who participate in non-therapeutic research out of altruistic motives.

The above criticism is very weak and unconvincing. I have not meant to deliberately set up a straw man argument but rather to deal with one often encountered, however weak it may be. There are three main objections to it. First of all we must remember what the fundamental moral issue is. The fundamental issue is the obligation to attempt to help those in need; the issue is not egoism. Thus, the altruistic reward the participant may receive is not a morally compelling issue. The loss of reward is not a moral reason we need to concern ourselves with.

Secondly, even if reward were a morally relevant issue, making participation in the research obligatory does not necessarily diminish the altruistic reward anyway. Nor does an obligatory act become non-voluntary, i.e., coerced.

The act remains voluntary. Thus, one can certainly perform an obligatory beneficent act and still enjoy the results of the act. Thirdly, even if the reward were eliminated or diminished for a particular individual, one could still enjoy altruistic rewards in other areas. Participating in research does not deprive one of baking a cake for a sick friend. We all have numerous opportunities to help others. If one simply has to enjoy these rewards, one is always free to seek them elsewhere. By doing so, still more benefit results. Persons are helped, it is hoped, by both the obligatory and non-obligatory acts, and the agent is still rewarded. For these reasons, the possible loss of reward is not an issue to cause us to reconsider the thesis of this study. Instead, it is basically beside the point.

Summary

In this chapter I have primarily been concerned to lay the specific groundwork needed to refute well established criticisms against my view. Thus, I have shown how health stands to contribute to the individuality of persons. Next, I argued that beneficent acts are obligatory in a binding way because of the benefit they produce and because the means that produce the benefit are morally acceptable. Furthermore, the binding obligation does not wrongly harm or jeopardize the interests or welfare of the participants. Then I addressed the separate issue of fairness and how it

comes into play with regard to non-therapeutic medical research. Finally, I showed that the presence or absence of reward that may or may not ensue from participation is not a morally relevant issue to concern ourselves with. With this foundation established, we can turn to address a specific opposing viewpoint.

CHAPTER V

CONTRARY VIEWS REGARDING MEDICAL RESEARCH

In "Philosophical Reflections on Experimenting with Human Subjects" Hans Jonas gives a thorough and eloquent argument against making participation in medical research obligatory.¹ Jonas contends that participation in research is an act of supererogation. As such, it cannot be demanded of the individual by society. Furthermore, obligatory participation is unfounded since it jeopardizes the basic inviolability of the human person due to the fact that in research the human person is relegated to the status of thinghood.² Jonas argues that the only way to avoid treating the human subject as a thing is if the subject freely volunteers. Given the necessity of voluntarism in medical research there can be no obligation to participate in research.

Jonas reaches his conclusions due to his understanding of the nature of society and the nature of the individual. His understanding of the two differ greatly from mine. In the course of this chapter I will point out these differences in order to show that Jonas' conclusions regarding

¹Hans Jonas, "Philosophical Reflections on Experimenting with Human Subjects" in Daedalus, Spring 1969, pp. 219-247.

²Ibid., p. 235.

human experimentation are in error. I will also briefly examine the position of Paul Ramsey, who is also opposed to making participation in research obligatory, with respect to the issue of consent. Ramsey would contend that obligatory participation in research is wrong, in part, because it would violate the person's right to informed consent. First of all, though, I will spell out the Jonas position with respect to the use of human beings in medical research.

Jonas

Jonas begins his argument by stating that human experimentation not only promises the hope of benefit but that it involves personal danger and risks as well.

Human experimentation for whatever purpose is always also a responsible, nonexperimental, definitive dealing with the subject himself. And not even the noblest purpose abrogates the obligations this involves...[To justify human experimentation] we must justify the infringement of a primary inviolability, which needs no justification itself; and the justification of its infringement must be by values and needs of a dignity commensurate with those to be sacrificed.³

The primary inviolability of the individual must be protected, or, if it is to be sacrificed it must be sacrificed in order to promote or protect a commensurate amount of human dignity. Experimentation designed to control a raging epidemic is commensurate. Medical knowledge gained by research

³Ibid., p. 220

to combat a non-epidemic disease is not commensurate in value.⁴

Jonas never states explicitly what this "primary inviolability" is. He must think that it is obvious to the reader since it "needs no justification." I will assume that he is of the view that the individual self is primary in morality and that it is imperative upon all to respect and protect the sacrosanctity, if you will, of the individual. Jonas is taking the traditional view that the good of the individual is more fundamental than the good of society and that the individual cannot be used merely for the benefit of society. It is in this perspective that he frames his response to the issue of using human persons as medical research subjects. He puts the individual good against the social good, the person against society. And "society--as distinct from any plurality of individuals--is an abstract and as such is subject to our definition, while the individual is the primary concrete prior to all definition, and his basic good is more or less known."⁵ We now see that Jonas' approach is opposite from mine. He begins with the individual and weighs the impact of social goods in light of the individual. I too make the individual fundamental in

⁴Ibid., p. 228.

⁵Ibid., p. 221.

that I claim that the chief moral good is individuality and this good is a possibility only in the lives of individual persons. But we differ in that I have argued that we can understand the individual only by understanding society, which the individual presupposes. What Jonas treats as an abstraction I treat as the basis for "abstracting" individuals.

Given that society is an abstraction, Jonas argues that society does not have a right to the use of persons in order to gain knowledge. Nor can society demand that the individual sacrifice herself for the good of others. Further, individuals are under no social contract to participate in medical experimentation.⁶

Jonas does not deny, though, that human research is a viable social interest that offers real benefit to individual persons.⁷ He simply claims that this good is to be achieved through voluntarism. Medical experimentation "goes decidedly beyond, even runs counter to, what is otherwise deemed fair to let the individual sign over of his person to the benefit of the common good."⁸

⁶Ibid., pp. 221-226.

⁷Ibid., p. 239.

⁸Ibid., p. 226.

a. The body. What is it that the individual signs over "of his person" to the benefit of the common good? Two issues need to be dealt with here. One is identifying what is "signed over." The other is examining the relationship between the good of the individual and the common good.

In the last chapter I identified the most invasive type of research which is obligatory to participate in as a research trial in which the subject would be required to give up to a pint of blood over the course of a year. Thus, the subject must "sign over" a pint of blood. The subject would be morally blameworthy if he failed to give his blood for the purpose of trying to benefit others. This entails venipuncture with its associated pain and extremely minor risk of infection. These are the constituent parts of what must be "signed over" of the subject's body.

And the body is not wholly a private possession. Individuality has been identified as the chief moral value. The body is the locus of individuality. It is where individuality exists. Individuality, literally, must be embodied. We have previously spoken of the role the body plays in influencing the possibility of individuality.⁹ If a person is sufficiently healthy, she partly possesses the prerequisites of achieving individuality. Since society is obligated to provide the opportunity for all to achieve

⁹See p. 39ff above.

individuality, it follows that society is obligated to promote health research.¹⁰ Therefore, an individual must "sign over" a portion of her body, to the degree that her capacity for achieving individuality is not jeopardized, in order to improve the body of others so that they will be afforded, if possible, the opportunity of achieving individuality.

This obligation reflects the fact, which Jonas does not recognize, that the body is a possession of both the self and society. The body is simply too important morally speaking, i.e., its instrumental value for promoting individuality is too great, to allow it to be treated as a purely personal possession. The body is a means to individuality. All persons have an interest in individuality. Therefore, everyone has an interest in each body. Consequently, any body is not the sole possession of the one it immediately embodies since we are collective, societal agents really. As such, we are obligated to provide for these common interests.

I realize this argument is initially counter-intuitive. After all, the body is unique to the one it embodies. (Please pardon my dualistic language). The body is the focus of all of our experiences. Sensory experiences, at least, are unique to each body. Sartre speaks of the body

¹⁰See Chapter Four above.

point of departure and you have yours. My body is mine and as being a point of departure.¹¹ As such, I have my your body is yours. My body does not, then, seem to "belong" to anyone else.

But, of course, the body is not solely a point of departure or a locale for experience. The body may be the immediate manifestation of the self but the self, as was argued in Chapter One, is a product of society. Society, in turn, is obligated to produce the most of the best possible selves. Everything else has instrumental worth with respect to that which is morally axiomatic, i.e., individuality. So the body is an instrument both of achieving individuality oneself and of providing to others the capacity for achieving individuality.

The body is an instrument for achieving individuality in the sense that the body is the locus of the self. The self maximizes potential in the body. A person develops his talents, skills, resources, etc. through overt behavior. This role of the body is the most common and the most immediate. It is that role experienced immediately by everyone. The body as an instrument for providing the capacity for individuality is only experienced reflectively. It is only when we stop to consider everything the body is that we discover that the body is also a tool for others.

¹¹Sartre, Being and Nothingness, pp. 404-445.

This is the role the body plays, for example, with respect to health. Health is, of course, not intrinsic to the body. Health is contingent on a number of elements. When health "leaves" the body and medicine attempts to restore it, this attempt is made possible, in part, due to the use of previous bodies, as was stated in Chapter Three. Hence, the body is not only the embodiment for an individual, it is also a tool for the welfare of other individuals. (There are other ways the body works as a tool for the welfare of others that I will only mention since the topic is superfluous to the present point: e.g., source of labor, source of sexual gratification, etc..)

When Jonas says there is nothing in the social contract requiring an individual to sign over his body, he overlooks this dual nature of the body, i.e., the body for the individual and the body for everyone. Jonas, I think, is concerned with protecting the self, as any morally sensitive agent would be. But you cannot protect the self by going to the extreme of possibly allowing harm to befall other selves. And if one treats the body as if it were only the body of a particular individual and thus only an instrument for achieving individuality, then one both denies that the body is an instrument for everyone and possibly unjustly neglects others. The first step in any thorough moral evaluation is fully to understand the constituents of the problem. I do not think that Jonas fully appreciates the

collective aspects of the body. My body is mine. That is correct. But my body is also there for everyone. To say that the body is there for everyone is to say that the body is a tool both for a particular self and for all selves taken collectively.

One can agree with the definition of body being offered here yet disagree with the normative conclusions I draw here. The disagreement could revolve around the kind of tool the body is, i.e., one can disagree concerning the range of activities for which the body is a morally suitable tool. In order to arrive at my conclusion, I must appeal to the principle of beneficence associated with individuality. Jonas does not appear to emphasize beneficence as much, at least not in the area of medical experimentation. Consequently, he overextends, in my view, the "sphere of inviolability" of any given individual. The consequence of this overextension is the possibility of avoidable harm by disease being visited upon or perpetuated in the life of a person. Given our duty to beneficence, this possible consequence is morally unacceptable.

b. Individual and common good. This leads us to the second issue at dispute. What exactly is the relationship of the good of the individual to the good of society? It is my contention that the good of the individual arises out of the good of society. I think everyone would agree at least partially with this statement. Jonas, however, is concerned

with allowing the good or welfare of the individual to be sacrificed for the common good. This assumes that the common good is logically different, at times at least, from the good of a particular individual. Thus, a chasm exists between the two. The common good, in this view, is not simply the aggregate good of all individuals. It is the aggregate good, instead, of all except one, a few, or a minority of individuals. It is immoral, according to Jonas, to place the individual in such an inferior and subservient position. I fully agree with Jonas here on this point.

Where I disagree is in the assumption implicit in the claim that there is at least a possible conflict between the individual good and the common good. The aforementioned common good is a misnomer, a morally dangerous misnomer. What it actually refers to is the majority good. The common good, on the other hand, is something shared by all. The common good is universally predicated to each and thus to all members of the society. If something, i.e., a purported moral good or value, cannot be so predicated, it, by definition, is not representative of the common good. Thus, the purported moral value cannot be adopted as in the interest of the common good. Rather, it can be adopted only as promoting the majority good. This is what Jonas is opposed to.

He sees a possible "tyranny of the majority"¹² arising with respect to human experimentation.

Two points follow from the foregoing discussion. First of all, there can be no conflict between the individual good and the common good. The common good refers to the good of all and thus to the good of each. Secondly, it leads our discussion to the topic of the role, and possible conflicts, of human experimentation and the common good.

To begin this discussion, we first must state what the common good is, with respect to identifiable goods. What will count as good for all, and thus good for each? I contend that the opportunity for individuality captures the common good. Since individuality is the chief moral good for human persons, each person ought to have the opportunity to achieve individuality if at all possible.¹³ Things which will count as for the common good, then, are those genetic and social prerequisites necessary for achieving individuality. Anything which increases the prerequisites, i.e., genetic and social factors, or opportunities for individuality for everyone is a common good. The test for a good

¹²cf. John Stuart Mill, On Liberty (Indianapolis: Hackett Publishing Company, Inc., 1978), p. 4.

¹³Grammatically this is an is...ought statement. Logically, it is an instance of one normative statement following from another. "Individuality is the chief moral value" is of course a normative statement.

society is whether or not that society provides for the common good as opposed to the majority good.

To elaborate on this point I will discuss an example. Let us step a few years into the future when, presumably, genetic surgery is an established medical practice. Further, suppose that one John Doe is conceived and the genetic structure of the zygote is such that Down's Syndrome is evident. Through microsurgery the defective gene is removed and John Doe is born, without a genetic disposition for Down's Syndrome. That is certainly good for John Doe. It vastly increases, indeed it establishes, the possibility of individuality for him. But what has that got to do with the common good? Two answers are involved. First of all, an individual good is not necessarily a common good even though a common good is necessarily an individual good. Society's concern with individual goods which are not also common goods is essentially negative. Society ought to be concerned with individual goods only if they are counter to the common good. This is not true with respect to the future John Doe's microsurgery. There is no conflict between the two. In fact, the removal of the defective gene represents an individual good to many people, viz., John Doe, his family, friends, and associates. They all will benefit from the absence of disease and suffering associated with Down's Syndrome.

This leads us to the second answer. The microsurgery itself is a common good in that it is an example of a social, medical good available to persons that, among its effects, enhances a person's opportunity for individuality. It is a possible good for all, assuming the distribution of this particular medical procedure is just and equitable. The same is true for all medical procedures and thus medical research since it promotes the variety and effectiveness of medical procedures. Each person is a potential victim of suffering associated with one or more diseases. That which may lessen the incidence or the severity of suffering from a disease, i.e., research, is a good for all potential sufferers. Since we are all sufferers in one degree or another from disease and disability, we all benefit in common from measures which provide a means of cure or coping. Thus, medical research can promote the common good. There is no necessary conflict between the demands of research and the common good. In other words, medical research which promotes the common good promotes the good of each individual in that there are fewer threats to his or her capacity for individuality.

Now, to what extent can research be bad for an individual and thus not be a common good? Where does my "worst case" type of research fit in? Does it promote the common good or violate the common good in that it violates the good of the subject? I will just state at the outset that it

promotes the common good in that it yields increased knowledge of some aspect of the human body. This adds to the possibility of manipulating the human body in a beneficial manner. If it were to violate the common good it must do so either physically or morally and politically. We saw in the last chapter how physical harm is not a concern in low-risk experimentation. The harm of venipuncture is so negligible as to be of no moral concern. But Jonas and those sympathetic with him are more concerned, I think, about the implications obligatory research has with respect to the moral and political interests and inviolability of the research subject. If a person's inviolability is infringed he or she is harmed, or morally mistreated, and thus such obligatory research would not promote the common good. Jonas insists that society (and thus the common good) can tolerate death and suffering from disease but it cannot tolerate a single miscarriage of justice.¹⁴ Justice is a foundation of society whereas the absence of disease and suffering is not.

This is the real strength of Jonas' argument. No one ought to dispute the importance of justice or undermine the prevalence of it in sanctioned actions toward or against individuals. But obligatory participation in research does not do this. Obligatory participation may infringe on the

¹⁴Jonas, p. 228.

liberty of the individual, but not the inviolability of the individual.

As I said earlier, Jonas never defines what this inviolability is. Thus, it is hard to say exactly why obligatory research violates it in Jonas' view. We can get around this problem, though, by discussing what ought to be inviolable with respect to the human person. Individuality is the chief good. It is the fundamental good of the social self. But the self has a dual aspect just as the body does. Thus, the self has a duty to beneficence as well as a right to fair and just treatment. There is the self for the individual and there is the self for others. I stated in the first chapter that morality presupposes a society. Hence, moral individuals are necessarily social individuals. The existence of others necessarily makes demands upon the self. A person cannot escape this fact. An individual not only lives for and serves himself, but he lives for and serves others as well. But there is a line that the others cannot cross when making demands on the self. The demands of others cannot violate or destroy the individual's capacity to achieve individuality. And the loss of liberty on a temporary basis does not violate the individual's capacity to achieve individuality, as was argued in the last chapter. Thus, the individual participant in research is not unjustly treated by the medical profession. Surely society must protect each person's capacity for individuality. But society

can allow for the use of persons in manners that do not harm this capacity even though the use would temporarily interfere with the actions of persons. So, obligatory participation does not constitute a morally significant harm to the individual. Thus, it does not qualify as a case of the individual being sacrificed for the common good.

Jonas likes to assume that the individual, both in terms of moral and political attributes and in terms of physical attributes, i.e., the body, is somehow isolated or self-contained. He treats society as if it was merely an aggregate of self-contained entities, i.e., persons. But of course society is more than this and persons are not self-contained. Persons are self-derived from society. This false assumption by Jonas leads him to place too much emphasis on the liberty of the individual. Liberty is not to be equated with that which is inviolable. A certain amount of liberty is associated with that inviolability, but it is not identical with it. Surely a person's capacity to achieve individuality ought to be protected and respected. But this respect and protection can be forthcoming and the person used simultaneously. Jonas misses this point.

c. Means, ends, and things. There is one last claim made by Jones that still needs addressing. Not only does obligatory participation infringe on the inviolability of the individual, according to Jonas, but research treats

persons as things. Thus, in order to escape thinghood, Jonas insists that research subjects freely volunteer.

What is wrong with making a person an experimental subject is not so much that we make him thereby a means (which happens in social contexts of all kinds), as that we make him a thing - a passive thing merely to be acted on, and passive not even for real action, but for token action whose token object he is. His being is reduced to that of a mere token or "sample."¹⁵

But does it follow that when we use someone in research that we necessarily use him as a mere means i.e., thing, and thus disrespect him as an end? Once we examine the Kantian principle that Jonas employs, i.e., never treat a person as a "mere means," I think we can discern that he is mistaken in his claim concerning medical experimentation.

When we consider how it is possible to use someone as a means, there are three different distinctions to be noted.¹⁶ First of all, we can use someone as a mere means. This involves treating them 1) as a means, and 2) as if they were not an end. In order to treat someone as if they were not an end would be to deny that they were persons, i.e., ends in themselves deserving of the opportunity to achieve individuality. An example of this would be a non-therapeutic

¹⁵Ibid., p. 235.

¹⁶I am grateful to Dr. Carson Strong, Program on Human Values and Ethics, University of Tennessee Center for the Health Sciences, Memphis, Tennessee, who suggested this distinction in conversation.

experiment in which someone is placed at significant risk by a researcher who shows no concern at all for the subject's welfare and safety. The Nazi experiments and the Tuskegee syphilis experiments immediately come to mind.

Secondly, we can treat someone as a means only. To treat someone as a means only is to treat them neither as an end nor as not an end. An example of this would be a situation in which a photographer is photographing someone and realizes the sunlight is too bright to photograph his subject. There is someone sleeping nearby, leaning against a bench and casting a shadow. The photographer places his subject in the shadow of the bystander and obtains the right light conditions for the photograph. However, he does not rouse the person and ask to use him to block the sun. The photographer has used the bystander as a means to his own end, but he did not treat him as if he were not an end, nor did he treat him as if we were an end either. He simply used the bystander's shadow. We could not demonstrate that any moral wrong was perpetrated against the bystander as no interest of his was violated, nor was he placed at any risk of harm. And since he was not treated as if he were not an end he was not treated as a mere means.

Thirdly, we can treat someone as a means and end. This is done when an individual is used as a means and treated as an end. An example of this is medical research

where safeguards are present for the subject and the subject's interests are realized and accommodated for. The fact that these considerations are made for the subject demonstrates that the subject is recognized as an end and treated as an end. Of course, the subject may be obligated to act differently than she otherwise would if she were not obligated. But this should pose no problem if the reader realizes that all persons are means and ends, not ends alone. Since these conditions can be and are met by medical researchers it follows that research can be done on persons without using them as mere means. Consequently, Jonas' claim that they are being used as things is false. So there should be no moral requirement calling for research subjects to volunteer.

Ramsey

Now we can turn to the position of Paul Ramsey. Ramsey would disagree with my thesis, in part, because obligatory participation appears to make informed consent superfluous. Thus, it would violate the "cannon of loyalty" that exists between the medical professional and the subject.¹⁷ Ramsey argues that obtaining informed consent is the only way to insure that the patient is indeed treated as a

¹⁷cf. Paul Ramsey, The Patient as Person (New Haven: Yale University Press, 1970), pp. 5-11.

person. Without consent, the autonomy of the person is violated.

The issue of autonomy is not as simple as it is sometimes treated by medical ethicists such as Ramsey. Ramsey assumes, correctly, that autonomous persons are competent decision makers. He concludes, wrongly, that persons ought to have virtually independent control over all medical procedures that involve their bodies. Two points immediately come to mind. First of all, we do not give such broad authority (and isolation) to autonomous persons with respect to other aspects of their lives. Secondly, this isolationism on the part of Ramsey reflects an insufficient account of the issue of autonomy. He moves from the capacity to make decisions to the unfettered right to make decisions. The conclusion I will argue for, again, is given the capacity to make decisions, one ought to be guaranteed that this capacity will not be jeopardized. If such guarantees are forthcoming, the individual's autonomy is respected.

It is axiomatic in contemporary medical ethics to require informed consent from research participants. I do not want to argue with the contention that in the final analysis the individual participant is the one who should decide whether or not to participate. If one has an obligation to participate, it does not follow that informed consent is superfluous. The purpose of informed consent is to protect

the individual and promote his or her autonomy.¹⁸ The major responsibility in protecting the participant falls immediately on the researchers and indirectly on the public at large. The researchers are responsible for insuring that the risks are in fact negligible and the potential benefits are of scientific merit. The public is responsible for seeing that the researchers fulfill their responsibilities. But the final check on the system is the research subject. He or she should have the opportunity to be informed of the risks and goals of the research to see if the other involved parties have done what it is incumbent upon them to do. Then, if the risks are negligible and the person refuses to participate he is morally blameworthy. He ought to participate and it is immoral of him not to. But he cannot be made to participate. It is not always wise to make moral obligations legally enforceable. (I will address this point briefly in the final chapter.)

To what extent does the preceding paragraph differ from Ramsey's account of informed consent? I hold individuals who refuse to consent to legitimate research blameworthy whereas Ramsey does not. This reflects the basic difference in our views toward autonomy and informed consent. Much of the meaning of autonomy is captured by the word sovereign. This reflects Ramsey's view of autonomy.

¹⁸Alexander Capron, "A Functional Approach to Informed Consent" in Biomedical Ethics, eds. Thomas Mappes and Jane Zembaty (New York: McGraw-Hill, 1981), pp. 75-76.

But that is not the entire meaning and it is somewhat misleading. Moral, social agents are dependent on society for many of the preconditions of happiness and individuality. The presence of these preconditions make demands of the individuals. Thus, no one is independent and sovereign in any part of his or her life. Rather, we have varying degrees of dependency.

When it comes to helping others through the use of our body we should have no more degree of authority over our bodies than we do of our money since the body is not a totally private possession. If our money can be taxed, then, *prime facie*, our bodies can be as well. Hence, our decision-making is not free of the demands of others. And others can go far in order to persuade me to make the morally correct decision with respect to participation in non-therapeutic research. A researcher would be correct in telling me it is wrong for me not to participate. She could use a wide-range of blaming epithets in order to persuade me to participate. In other words, the researcher does not have to treat me as an isolated sovereign of my body. I am not such a sovereign either over my body or my life in general. I am, or ought to be allowed to be, sovereign over my individuality.

Individuality is the sphere of my self over which I am sovereign. Autonomy is essential to individuality. My capacity to make decisions must be respected and protected.

Thus, just as research which takes into account my well-being and safety and status as a person does not treat me as a thing neither does it violate my autonomy. If my capacity to make decisions is not interfered with and if decisions which should be made, or at least approved, by me are not made for me then my autonomy is respected. Obligatory research sanctioned by this study does both. It protects the subject's capacity to make decisions and it does not compel the person to participate. It tries to persuade the participant through language and it blames the participant if he fails to consent. But blaming someone does not violate his autonomy. Rather, the blame affirms there is an autonomous agent present. Otherwise, the person could not be blameworthy.

Conclusion

Jonas and Ramsey both exercise overkill in their positions regarding human experimentation. Both are concerned with the potential for abuse in human experimentation. But they go too far in their protection. They fail to realize that use is not always abuse. Medical research does use persons for the benefit of others. But it does not follow from that that the subjects are used as mere means or things as Jonas contends. Nor does all non-therapeutic research sacrifice the good of the individual for the majority good. If the participant's capacity for individuality is

protected, the true inviolability of the individual is respected. Jonas treats too much of the individual as inviolable. This is not justified given the social nature of persons. Finally, Ramsey translates autonomy into near complete sovereignty and this too overlooks the social, dependent nature of persons. Persons are sovereign with respect to their individuality and obligatory participation in nontherapeutic research is not necessarily a disregard of this sovereignty.

CHAPTER VI

SHOULD RESEARCH SUBJECTS BE DRAFTED?

This chapter will address the last substantive issue of this study. I have already presented my argument establishing an obligation to participate in some types of non-therapeutic medical research. The natural progression of the topic leads us to consider when, if ever, a draft of research subjects would be justified. Using pure consequentialist reasoning it is obvious that such a draft is hypothetically justified. If a sufficiently large portion of the population is harmed and/or threatened by a disease, then it would be incumbent upon society to attempt to reverse this trend. If large scale medical research was assumed to be the most efficient means of reversing the trend, then a draft of subjects would be justified. But my position is not purely consequentialist, as was pointed out in Chapter Two. In order for this writer to justify a draft, the good to be achieved would have to be obtained by respecting the draftees individuality. All things considered equal, this can be done. There can be a morally justified draft of medical research subjects. Even Kant is forced to give the same conclusion. This may sound surprising at first. The point will be developed in the course of the chapter. Also, I will discuss the probable inadvisability of a legal draft. (Hence, the "all things considered equal"

qualifier above.) First of all, though, I will present my argument giving a moral justification for a draft based on the principle of individuality.

Medical Drafts and Individuality

To begin, let me explain when I think a draft would be justified. Obviously, there must be a grave reason to justify drafting persons. The "mere" threat of death of individuals is not such a grave reason. If such a threat alone were sufficient, a continual draft would be justified. More of a threat is needed. First of all, something along the line of an epidemic must be at hand. The present concern over Acquired Immune Deficiency Syndrome is a good example. That is the first criterion. Secondly, there must be sufficient reason to draft subjects rather than recruit them as is normally the case. An example of a sufficient reason would be a case where the actual research population is so small, and the need for subjects is so great, that mandatory participation is necessitated if the research is to stand a chance of being successful. Persons with extremely rare blood types serve as an example of a small research population. A third criterion, that perhaps need not necessarily be met, is the strong promise of success in finding a cure if the draft is enacted. For example, let us suppose that researchers judge themselves to be very close to a cure of a fatal disease, e.g., cystic fibrosis. If

they are to succeed, however, they need to increase quickly their pool of research subjects. Otherwise, the research will be prolonged and thus many perhaps unnecessary deaths will occur. That case also would justify a draft in my view.

Need alone does not justify a draft, however. I argued in Chapter Four that there must be a need for research and the research procedures must duly respect the rights and interests of the draftees. In a draft, an otherwise voluntary performance of a duty becomes mandated by conscription. The question confronting us is whether or not this represents a justified controlled entry into the life of the individual.¹

It was my contention in Chapter Four that we ought to err on the side of protecting individuality rather than promoting it. Hence, a lesser amount of participation in research is justified rather than a larger amount. Only research involving minimal pain, risk, and inconvenience is acceptable. If draftees were to be used in such a study, it would initially appear to be justified since the bodily entry into the individual would fall within the guidelines established in Chapter Four.

However, to speak of a draft of research subjects one assumes there is a proportionally grave medical reason for

¹See p. 86 above.

instituting such a draft. And this grave reason would lead one to entertain the notion of accepting perhaps more than a minimal amount of pain, risk, or inconvenience. This is the conclusion I will argue for.

First of all, the grave medical reason must as I mentioned refer to fatal or seriously debilitating diseases and/or syndromes, maladies, etc. I say this given my insistence on erring on the side of protecting rather than promoting individuality. If one is to accept more than minimal pain, risk, and inconvenience, then it must be accepted in order to provide person's with the capacity to achieve individuality rather than enhance their capacity. If one is subjected to more than minimal risk in the effort simply to cure psoriasis there appears to be a confusion of priorities. We should not be callous toward the sufferer, but we should not be flippant towards the welfare of the non-sufferer either. Therefore, we should exclude from any draft research designed to enhance individuality. We should only include in a draft research designed to provide the capacity for individuality, e.g., research designed to understand the cause of and provide a cure for a disease like cystic fibrosis.

What degree of pain, risk, and inconvenience are we willing to tolerate in a medical draft? Again, I will give a conservative answer. I think more than minimal pain and inconvenience is acceptable. However, I think minimal risk

is still an advisable place to draw the line in terms of acceptable risk. Our goal is to increase the instances, i.e., embodiments, of individuality. What is the sense of jeopardizing one embodiment for the mere hope of providing the necessary degree of health for another? I see none. However, on the other hand, more than minimal pain or inconvenience could be accepted without jeopardizing the embodiment of individuality. For example, venipuncture with large needles or an overnight stay in the hospital would be tolerated if a proportional good is expected as a result. The person does not jeopardize her individuality if she is required to spend the night in a hospital. Given the presence of an epidemic that threatens the very health and lives of a specified population, I am willing to mandate the added cost to the draftee in terms of pain and inconvenience. These added costs are temporary to the draftee. The threat of harm, however, to the sick is permanent.

The reader may want to criticize me for inconsistency. I am justifying more entry into the life of the individual in this chapter than I did in Chapter Four. My justification for this difference arises from the severity of the need which justifies a draft in the first place. I assume that researchers see a draft as a necessity. (When, if ever, this may be the case is open to speculation. I personally think such occurrences would be extremely rare.) There is no other alternative open to them short of

abandoning the search for a cure. Thus, extraordinary situations call for extraordinary actions. Given the absence of the grave reason we are not willing to make the same demands of individuals. More personal control is seen as a better way to promote individuality than less personal control. But in extreme circumstances such a large degree of personal control would have to be considered a luxury rather than a necessity. Consequently, a draft of research subjects can, in principle, be justified using the principle of individuality. We can now turn to the Kantian justification of such a draft.

Medical Drafts and Kant

Of course, I argued in Chapter Two that Kant's a priori system of ethics is untenable. So this discussion is somewhat beside the point. But I think it will prove worthwhile nonetheless to give a Kantian defense of binding specific acts of beneficence. Initially, most readers of Kant would think that a draft would be unjustified. The motivation of the draft is to help persons in need. Usually, clear acts of beneficence are seen as examples of imperfect duties which can be excepted in favor of inclination.² Thus, the duty to help others is not universally binding as

²Kant, p. 860, footnote 12.

is the duty to speak the truth when we must speak.³ Thus, at first glance it seems that a draft could not be justified. Let us take a longer look at Kant's ethics, though.

To begin with, it is useful to examine the assumptions underlying Kant's distinctions between perfect and imperfect duties. What is it that justifies making some duties universally binding and other duties not universally binding? Concerning perfect duties, it is clear that Kant felt that one could not rationally will that some duties not be universally binding, e.g., truth-telling and promise-keeping. To will otherwise would involve a contradiction. Kant seemed to recognize the value of certain principles and behavior for promoting and maintaining a moral community, e.g., truth-telling, respect of property, life, etc. He also recognized, as would any morally sensitive agent, the need for beneficence in a moral community. The moral law requires it as well as fidelity and truthfulness. The difference, though, is that Kant claims the duty to perform specific beneficent acts is not universally binding.

Kant tends to discuss such imperfect duties in terms of charitable acts.⁴ It is my contention that there are two

³Immanuel Kant "On a Supposed Right to Lie From Altruistic Motives" in Biomedical Ethics ed., by Thomas A. Mappes and Jane S. Zembaty (New York: McGraw-Hill, Inc., 1981) pp. 62-64.

⁴Kant, Metaphysic of Morals, pp. 861-862.

basic reasons for making the duty to perform beneficent acts an imperfect one. First of all, the number of possible beneficent acts which could be performed are obviously so vast as to be practically infinite. A person could devote her entire life to doing good for others without devoting any of her energies or time toward her own needs or interests. We may certainly wish to praise her for her charity, but no one would say that she was obligated to perform each and every beneficent act. Hence, there is the implicit recognition that there is more to life than helping others in need, as well as the fact that a perfect duty to help others would exhaust a person's time and energy.

The second reason for making charitable acts an imperfect duty, I contend, is recognition of the fact that we are not isolated moral agents. Instead, we all are members of a moral community. What this effectively means is that the burden to help those in need does not fall strictly on one person's shoulders alone. Instead, it is a burden the community shares collectively. Thus, I am not the only one who has an obligation to help those in need. I have an obligation, rather, to help the community minister to those in need of help. As I am not expected to spend all my time and energy helping others, I am at liberty, so to speak, to choose to fulfill my obligation as I see fit. Obviously, how I choose to fulfill my obligation will not be how everyone else chooses to fulfill their obligations. This means

that if I choose not to help a particular person in need of help he will not necessarily go without help. It is hoped that another member of the community will choose to do what I chose not to do. Hence, I can refuse to help someone and at the same time envision that the person will still receive help. I think this is at the heart of any justification given for saying that we are not universally duty bound to help others in need. To refuse to help in one instance does not endorse a law of universal indifference. So, given that my refusal to help someone does not necessarily mean that he will go without help since I am only one member of a larger moral community, along with the fact that a perfect obligation to help others would usurp all my time and energy, Kant seems justified in making most specific acts of beneficence voluntary as opposed to mandatory. Most of the time there will be others in a position to do what I did not.

However, does it follow that since most beneficent acts by individuals are voluntary that the beneficence of a community is voluntary as well? In other words, can a moral community choose rationally not to help those in need and deserving of help? In order to answer this question I first need to give an explanation as to why it is legitimate to speak about the will of the moral community in Kantian terms. It is true that Kant never spoke of such a will. However, he implicitly, at least, emphasizes the moral community. This occurs in his discussions of truth-telling

and promise-keeping. Kant argues that one could not universally will either since both involve contradictions. The "contradictions" really appear to be "intolerable inconveniences" to the community. If a universal law of lying or promise-breaking were made then their counterparts would be undermined, viz., truth-telling and promise-keeping. If lying were universally willed we could never know when to believe the statements of persons and when not to. "The intolerable inconvenience" is a breakdown in communication within the community of moral agents. The same consequences, i.e., the meaninglessness and thus misleading nature of promises, ensues from a universal law of promise breaking. These inconveniences are suffered by everyone, i.e., the community, since the consequences are multi-personal for Kant. So, the existence of the community is clearly recognized by Kant. But is a community-wide will recognized by Kant? I think it would have to be since each moral agent stands in relation to all the others. Thus, a group is constituted and that group will be required to act at times, or individuals will be required to act morally on behalf of the group. Given Kant's demand that all morally justified actions have a categorical basis, it seems consistent with the spirit of Kant to speak of the will of the moral community.

If we use the Categorical Imperative to evaluate the actions of the moral community, it seems that a moral

community could not rationally will that those deserving of help not receive it if the community has the resources to provide help. If the sick are seen as deserving as well as needing help, then would the community not be obligated to provide such help if it is capable? If so, perhaps this would justify drafting research subjects if a draft were a necessary condition for rendering the help that is needed.

By looking at a hypothetical situation we may be able to make some progress toward establishing the claim that the need for research may be an instance where specific acts of beneficence are binding. Most everyone is probably familiar with the famous violinist referred to by Judith Jarvis Thomson in her article on abortion.⁵ She spoke of a famous violinist who suffered from a rare kidney disease. His only hope of survival is to be hooked up to you for nine months so your kidneys could cleanse his blood. And only your kidneys are suitable for the task. No one else's are a proper match. Let's change the scenario slightly. Instead of him requiring your services continuously for nine months, he only needs your help an hour every two weeks. This is enough to insure his survival. Even so, are you required to make this sacrifice? Just because he needs the use of your body, does it follow that you are morally required to let

⁵Judith Jarvis Thomson, "A Defense of Abortion," Philosophy and Public Affairs, Vol. 1, No. 1, pp. 47-66.

him use it? Thomson would say no. She contends that one does not necessarily have a right to what one needs. If what I need would require a beneficent act on your part, you are not morally required to provide me with what I need. It would be praiseworthy for you to do so, but if you refused you would not be blameworthy. Imperfect duties are not binding in that manner. Rather, it is thought that we can perform them when we choose.

But is this example one of an imperfect duty? Remember, it was my contention that an imperfect duty presupposed a moral community present to fulfill the obligation. Thus, if I choose not to help an individual, it does not necessarily follow that he will not receive the help he needs. The case of the violinist is clearly not an instance of that sort. If I do not help him it does necessarily follow that he will not get the help he needs. If I do not help him, he will die. In a case like this, I am the sole available agent of the moral community. The obligation of the community falls squarely on my shoulders. If the moral community could not will categorically that the violinist should die in that the moral community could not will universally that deserving persons in a position to be helped or saved should be neglected at the expense of death by the community, then I would be obligated to sacrifice an hour of my time once every two weeks, assuming my health was not sacrificed or jeopardized as a result. Regardless the size

of the community, the obligation is there. And this obligation justifies depriving me temporarily of my liberty.

Here I must stop and clarify two issues. The first concerns my claim that the categorical imperative necessitates action on the part of the community to ensure that the suffering person is not neglected. In order to justify this claim I must show that the maxim for inaction fails either test Kant formulated for the Categorical Imperative. Does a maxim of inaction involve us in a contradiction? There is much to be said here in defense of the claim that a maxim of neglect would be contradictory. To stand by and do nothing to prevent the death of a person, one who is an end-in-oneself, seems to contradict the meaning of being an end. One who is an end-in-oneself is, for Kant, one who is autonomous, i.e., self-responsible and self-directive. These attributes of "endness" presuppose, with respect to embodied human life, survival. Thus, to be indifferent toward the survival of an end-in-oneself would seem to imply indifference toward the person and would thus seem to imply a lack of due respect for the "endness" of the person. Yet respect for persons as ends-in-themselves is at the very heart of Kantian ethics. So, to claim that we ought to respect persons as ends on one hand and then claim that we ought to ignore their struggle for survival on the other hand reveals an opposition, at least, if not a contradiction. Neglecting a person's needs in the struggle for

survival undermines the value of treating persons as ends just as willing lying undermines truth-telling.

The second test used by Kant was that of self-interest. If we can foresee that a maxim might potentially work against our own future, legitimate interests then that maxim cannot be rightfully universalized. Thus, if one were to will that the community should refuse to carry out actions that would very possibly preserve the lives of persons, then one would be going against one's own self-interest. That person may be in need of such help some day. If so, one surely would then want the help of the community. For these reasons, it should follow that the Categorical Imperative would result in a law of assistance rather than neglect.

One other important step in the argument remains. It is one thing to establish that the community ought to do X and then use that as a justification for the claim that the community can compel me to do X. In order to justify this in Kantian terms we would have to make reference to the community and how the community sanctions its actions toward its members. If the community wills that a person ought to be helped and the nature of the assistance required is complex, i.e., it involves concerted action between many individuals, it seems only logical that the community would be required to take the necessary steps to insure that the

community does what it is supposed to do. Thus, if the community ought to do X, i.e., assist A, and if doing X entails action X^1 , i.e., compel concerted action by individuals, then the obligation to do X would seem to include the obligation to do X^1 as well. This is apparently tautologous. The community ought to do (X^1) what it ought to do (X). To deny this would be contradictory. To say that the community ought not to do ($-X^1$) what it ought to do (X) makes no sense.

If my analysis of both of the above issues is correct, then a Kantian justification for obligatory assistance for the hypothetical violinist follows. An analogy can be drawn between this hypothetical case and real life-threatening diseases. But instead of an individual being physically connected to another, a draft of research subjects would require studying an individual or group of individuals in hopes of helping other individuals. This is different from the hypothetical case in that we do not know the research will be beneficial. However, we could know that the potential recipients would die if nothing is done to help them given the nature of their disease. If the moral community cannot will that nothing should be done to preserve the lives of these individuals, then it would follow that the community is morally required to take steps thought to be beneficial in helping to preserve their lives. If research is one of those steps, and if volunteers are not

forthcoming from the community at large, then perhaps a draft would be the only way the community could fulfill its obligation. As I said earlier there may be cases when a certain segment of the population is physiologically uniquely suited to serve as a research population for a certain disease. Hence, the size of the moral community would be reduced to that specific group. It would be the moral burden and requirement of that group to fulfill the obligations that would normally fall on the community at large.

If my analysis of Kant's duties is correct and assuming the following requirements are met, a society could be justified in Kantian terms in drafting research subjects: (1) The draftees' interests must be protected. (2) The community must not be able to categorically will that those suffering from a disease continue to suffer due to neglect from the community. (3) There must be an absence of volunteers forthcoming. We see, then, that it is not necessarily true, even within a Kantian framework, that all beneficent acts are imperfect and thus non-binding duties. Instead, under certain conditions the duty to help another may be actually binding.

Summary

Then, it appears that a draft can be justified using: 1) the principle of individuality; 2) Kantian ethics, 3) utilitarian ethics. Of course, it is very unlikely that

the need for such a draft would arise. Furthermore, and most importantly, the good or need of the draft would have to be weighed in its broadest social context. I have examined the issue simply in terms of the competing needs and interests of the persons directly involved, viz., the draftees and the potential beneficiaries. But I did not examine other contingent issues such as the political environment and other competing social needs that would demand the same monetary resources that a draft would utilize. For instance, the money and human effort may be better utilized to combat hunger or poverty than to combat cystic fibrosis or AIDS. For these reasons, a draft can be justified if all things are considered to be equal. Perhaps this condition would never arise. Thus a legal draft of research subjects may be very difficult if not impossible to justify in fact. Further, if it were enacted the issue of civil disobedience would arise. These are fascinating and important issues which are pertinent to the justification of a draft of medical research subjects. However, these issues lie beyond the scope of this study.

This study was designed to establish the obligation of persons to participate in some types of non-therapeutic research. Thus, obligatory participation is not wrong in principle even though there is much sentiment to suggest that it is wrong. Since the obligation is there, the question arises as to whether or not it can be enforced in terms

of a draft. In principle, again, it can be enforced. This, I think, is as far as we need to progress. The obligation to help others via research is present. Most of the time, fulfillment of this obligation is best left as voluntary. However, it may be mandatory in certain extraordinary circumstances.

CHAPTER VII

SUMMARY AND CONCLUDING REMARKS

Summary

I have argued in this study that persons have an obligation to participate in non-therapeutic medical research as long as that research does not threaten a person's capacity for achieving individuality, i.e., as long as the research does not involve more than minimal pain, risk, and/or inconvenience. I arrived at this conclusion by first of all giving a metaphysical analysis of personhood. I have attempted to show in Chapter One that a person is a product of society. As such, society is epistemologically prior to persons and society makes persons what they are. I have shown that persons are indeed self-conscious and self-directive, yet products nonetheless.

In Chapter Two I have argued that persons are tools used by society to promote the end of society, viz., individuality understood as self-actualization. This individuality requires certain preconditions which society is obligated to provide to its members. Consequently, I have argued in favor of a teleological approach to ethics since the obligation of society is to provide for the goal of individuality. By using the concept of individuality as a basis for moral decision making, I have shown how both a principle of justice and a principle of beneficence ought to be incorporated in

solving moral problems. The principle of beneficence requires society to do positive things in an attempt to provide its members with an opportunity for achieving individuality. The principle of justice sets the constraints within which society must perform its beneficence. But the principle of justice does not rule out a priori the use of persons by society to promote the goal of individuality.

I have argued in Chapter Three that the institution of medicine routinely uses persons both in training and research. It is a necessity given the structure of contemporary medical science. In Chapter Four I have argued that, first of all, health does contribute to the achievement of individuality by persons. Given this, and since society is obligated to provide persons with the opportunity, to the extent possible, to achieve individuality, it follows that society ought to promote medical research aimed at providing and/or enhancing persons' opportunities to achieve individuality. It further follows that persons have an obligation to help society meet its responsibility since beneficence is at the heart of morality. Persons have a general duty to beneficence. Beneficence requires medical research which sometimes must be non-therapeutic. Since some forms of non-therapeutic research does not unjustly harm or inconvenience persons, person consequently have an obligation to participate in some non-therapeutic medical research. This is the basic argument I have used.

I have also dealt with critics of my position, viz., Hans Jonas and Paul Ramsey. They have argued in the past that there is no obligation to participate in non-therapeutic medical research. I have tried to dismiss their views by showing that, in light of the discussions of Chapter One, they do not properly understand the nature of personhood. They are too steeped in the assumptions of individualism to fully appreciate the actual social nature of persons. Consequently, these conclusions on the topic are inadequate.

Finally, I have shown in Chapter Six that a draft of research subjects can be justified using the concept of individuality, utilitarianism, and Kantianism. However, I have also indicated that there will usually be countervailing reasons which will probably advise against a legally enforceable draft.

Concluding Remarks

The conclusions I have drawn in this study may have been less than those anticipated at times by the reader. While I have argued that a general duty to beneficence ought to be at the heart of our moral decision making and that this duty can place specific demands on people that infringe upon their liberty and bodies, I have at the same time very narrowly defined these legitimate infringements. The most promising kinds of research, often times, are more invasive than those which have been justified herein. Thus, for all that I

have said with regard to our social duty to improve health care through research in an effort to fulfill our social obligation to provide for and enhance persons' opportunities for achieving individuality, I many times would have to stop short of justifying research. But I think my reasons for stopping are well-founded and they bear repeating once more. The purpose of doing research is to serve the interests of individuality. But it makes no sense to significantly risk destroying what you are trying to promote. It makes no sense to knowingly jeopardize Peter's capacities for individuality in order to serve Paul's capacities for individuality. Rather, Peter's capacities must be protected and that is why I have justified research which causes only minimal harm, risk, and/or inconvenience.

This reservation on my part illustrates a possible contrast between my approach and a standard interpretation of utilitarianism. I am not trying to produce the greatest net amount of individuality at the expense of sacrificing the individuality of a few for the many. If that is a valid criticism of utilitarianism (and I argued in Chapter Two that I think utilitarians can escape this criticism) it is not a valid criticism of my position. My concept of individuality has a strong principle of justice as well as beneficence. Obviously, a balance must be struck between the two. Some may disagree with where and how I have decided to strike that

balance. Nonetheless, I think I have given good reasons for striking the balance in the manner that I have.

One final issue that needs addressing concerns the claim that I have defended which makes persons who do not participate in obligatory research only blameworthy. I do not advocate punishment, retribution, etc.; I only claim that such persons are blameworthy. Thus, all that anyone is justified in doing toward a non-participant is directing blaming epithets at the non-participant. In other words, we cannot force participation except possibly in draft situations. The result, then, might be negligible even if there was agreement with the thesis of this study. Persons might choose to be irresponsible and refuse to participate in non-therapeutic research. If this were to occur, I do not think much could be done about it outside of public appeals designed to persuade persons to fulfill their obligations. I think for obvious reasons more forceful steps would be unwise.

Regardless of these two drawbacks just discussed, I still think my conclusions in this study are important. It is important to show that persons are obligated to help other persons at times more frequent than we may generally assume. The establishment of such obligations follows from and helps illustrate the contention that persons are not morally isolated individuals. Rather, they are community members. It is the community, i.e., society, which grants persons the moral and phenomenal status that they enjoy. Persons do not

have any type of independent existence, nor do they possess any strict privilege of isolation from and/or indifference towards others. I think this is the most important point of the study and it deserves serious consideration from the readers.

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