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2

AUTONOMY, MONOMANIA AND FREE DEVELOPMENT OF PERSONALITY IN THE CLINICAL RELATIONSHIP. TO WHAT EXTENT CAN THE AUTONOMOUS PERSON BE PROTECTED?

Óscar Vergara

Abstract: All competent moral agents have a *prima facie* right to make their own health decisions. When this competence is lacking, they cease to be autonomous and someone else may justifiably make decisions for them in an act of soft paternalism that is generally admitted. The problem arises when autonomous subjects need to be protected (from themselves). This type of protection only tends to be admitted in very exceptional cases, such as suicide attempts, as a form of hard paternalism. So the question arises as to whether and to what extent this protection can be extended to certain cases in which the autonomous and competent moral agent acts according to an uncommonly singular life plan. To answer this question, we deemed it important to distinguish between freedom and autonomy, for which purpose we have adopted a eudaimonic approach.

Keywords: *autonomy, paternalism, agency, principlism, phronesis, free development of personality*

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1. AUTONOMY AND PATERNALISM IN THE CLINICAL RELATIONSHIP

Since its origins in the 1970s, bioethics has effected a change in the clinical relations model, advocating the shift from a paternalistic model, where the physician assumes responsibility for decision-making, to an autonomous model where the patient takes on this responsibility personally. As J.A. Seoane states, autonomy is a pendulum reaction to paternalism. The latter implies that doctors treat patients in the same way that parents act with their children, by determining what they consider to be beneficial for them. In a sense, autonomy means that patients abandon the paternal protection of the doctor in order to follow their own rules and decide on their own good as regards health care (Seoane, 2004: 43-44).

Autonomy is, to a large extent, a juridical concept because it involves the duty (in justice) to respect the right of other persons, that of patients, to the extent of their capacity to make decisions. In fact, according to Beauchamp and Childress, the principle of autonomy means recognizing patients' "right to hold views, to make choices, and to take actions based on their values and beliefs" (Beauchamp & Childress, 2013: 106). It is also an ethical concept since all that is juridical is an integral part of ethics, although not all that is ethical is relevant to the law, which has a more restricted scope. From this point of view, in addition to the duty to respect the autonomy of other persons (juridical aspect) there is the moral duty to exercise one's own autonomy, an idea which D. Gracia has insisted on. He states that bioethics should aspire to nurture autonomous persons and not merely obedient or heteronomous subjects; the latter, in his opinion, is typical of the Stoic tradition, insofar as it advocates submission, not to one's own judgment, but to the moral law. On the other hand, the Aristotelian model, which Gracia considers preferable, favors, in his opinion, the autonomy of the individual, because he considers it to be based on deliberation (Gracia, 2011: 118-120).

However, autonomous action is not always possible, so in these cases acting on behalf of another person is considered legitimate. In the healthcare relationship, it is assumed that professionals, due to their training, experience, knowledge and understanding, are in a position of authority to determine the best interests of the patient, in a way comparable to parents in relation to their children. Beauchamp and Childress define paternalism as *"the intentional overriding of one person's preferences or actions by another person, where the person who overrides justifies this action by appeal to the goal of benefiting or of preventing or mitigating harm to the person whose preferences or actions are overridden"* (Beauchamp & Childress, 2013, 215, their italics).

In fact, ethics, according to Beauchamp and Childress, do not only entail preventing harm (principle of non-maleficence) and that individuals act autonomously (principle of autonomy), but also contributing to their well-being, which goes beyond both principles (Beauchamp & Childress, 2013: 202). This ideal is embodied, in the context of its methodology, in the principle of beneficence, whose essential content consists of acting for the benefit of others (Beauchamp & Childress, 2013: 203). This entails both negative prohibitions and positive obligations, such as "to save a drowning person if I can do so without risk to my own life". It is more doubtful, however, that there could be a positive obligation to contribute to the solution to world hunger, although it is an ideal and a meritorious action (Beauchamp & Childress, 2013: 206 ff.).

This principle is particularly relevant when the patient is not in a psychological or a physical condition to make any kind of decision and it is not incompatible with the recognition of a certain position of authority of the health professional. This authority, in the opinion of Beauchamp and Childress, is not necessarily an obstacle to the autonomy of the patient, but it can be when not adequately presented or accepted (Beauchamp & Childress, 2013: 105-106). The principle of autonomy consists of recognizing one's right to maintain one's own points of view, to make choices and to take action based on one's values and beliefs. However, to achieve this involves as much not interfering in the personal affairs of others as, according to Beauchamp and Childress, empowering and supporting others to enable them to make autonomous decisions. A specific example of the principle of autonomy is, in relation to the latter: "when asked, help others make important decisions" (Beauchamp & Childress, 2013: 107).

The obligation to seek the benefit of others, according to Beauchamp and Childress, may find its foundation in Hume's argument that if indi-

viduals benefit from living in society, then it follows that they must promote society's interests. In this sense, it is a mistake to consider the health professions to be purely unilateral, altruistic and philanthropic activities, since it is thanks to society that professionals have been trained and it is thanks to their patients that they have acquired experience (Beauchamp & Childress, 2013: 213).

Alternatively, a justification could be sought in the Kantian categorical imperative, one of whose formulations is: "Act only according to that maxim whereby you can at the same time will that it should become a universal law" (Kant, 2012: A52). Kant expressly questions whether there can be a duty of beneficence to help others, and he asks whether a principle according to which an individual in dire straits might shy away from helping another could be applied universaly. In his opinion, such a principle could not be valid as a natural law, for a will that resolved in this way "would contradict itself, inasmuch as cases might often arise in which [the one who thinks this way] would have need of the love and sympathy of others and in which he would deprive himself, by such a law of nature springing from his own will, of all hope of the aid he wants for himself" (Kant, 2012, A56-57).

It is important to draw a distinction between soft and hard paternalism. Soft paternalism involves intervention in an individual's life in order to prevent substantially non-voluntary behavior such as ill-informed choices or action taken in a state of depression or when suffering from some kind of addiction. In contrast, hard paternalism involves intervention in order to prevent or mitigate personal harm or to benefit individuals even though their reckless course of action is informed, voluntary and autonomous.

While Beauchamp and Childress have no issue with soft paternalism, they only admit hard paternalism in exceptional cases, such as the temporary concealment of information so as not to unsettle a patient or the prevention of a possible suicide (Beauchamp & Childress, 2013: 222-225). In their view, there are five requirements for the validity of hard paternalism: 1) A risk of significant and avoidable harm to a patient. 2) The paternalistic action is likely to prevent harm to a patient. 3) The prevention of harm outweighs the risks of paternalistic action. 4) There is no better moral alternative than to limit autonomy. 5) The least autonomy-restrictive alternative is adopted. In some cases a sixth requirement can be added: 6) The paternalistic action does not substantially damage autonomy interests (as would be the case if we were to disregard the decision of a Jehovah's Witness refusing a blood transfusion).

The following cases may serve as examples. On the one hand, a patient who, out of an irrational fear of surgical procedures or because he is obsessed with paranoid ideas about an alleged conspiracy against him, refuses the surgical procedure that, according to the attending physician, will save his life. In this case, intervention is possible given that the patient's behavior is substantially involuntary; it is a case of soft paternalism.

On the other hand, another patient who, in the same circumstances, refuses the procedure on the grounds that, as a side-effect, it will cause him to lose sensitivity in his fingers, which will impede him from continuing to devote himself to his successful musical (or sporting) career which is at the very heart of his life plan. In this case the behavior is substantially autonomous, as can be observed if we consider the requirements that Beauchamp and Childress stipulate for this kind of actions: intentionality, understanding and "noncontrol" (Beauchamp & Childress, 2013: 104-105) (to be examined in more detail below). It is an analogous case to that of the Jehovah's Witness who raises an action of hard paternalism, which, in principle, would not be justified either. Now, according to Beauchamp and Childress, requirement 6) cannot be applied in all cases of hard paternalism, as would be the case, for example, of a competent patient with a peculiar religious viewpoint who asks the doctor, in accordance with a strict interpretation of the Bible, to remove his right eye (Beauchamp & Childress, 2013: 222-223). Here, paternalistic intervention would be justified.

So, what is it about our musician? To what extent is his point of view about the meaning of life odd? What if, instead of being a professional musician, he were a great archery enthusiast? Should we respect and accept his autonomous decision without further ado? Who are we, others, to question his autonomy? Does that mean that others can question ours?

It is important to remember that Beauchamp and Childress specify the principle of autonomy prescribing to help others to make important decisions *when one is required to do so*.

Prima facie, autonomy and paternalism seem to be mutually exclusive since it does not appear to make any sense to protect an autonomous individual. According to J. S. Mill, whose position will be further nuanced below (see 4.b), as long as a person "possesses any tolerable amount of common sense and experience, his own mode of laying out his existence is the best, not because it is the best in itself, *but because it is his own mode*" (Mill, 1975, 64, my italics). He adds that over himself, over his own body and mind, the individual is sovereign (Mill, 1975, 11). The

individual, according to Mill, is entitled to the "free development of individuality" (Mill, 1975: 54).

2. BIOJURIDICAL APPROACH

The Spanish Constitution (SC) does not expressly grant the right to refuse treatment. Nevertheless, it acknowledges that everyone has the right to life and to physical and moral integrity in art. 15 and it recognizes the right to dignity and to the free development of the personality in art. 10.1. Hence, an a fundamental rights based approach could conceivably be of interest to shed light on the issue at hand.

Since the Ruling of the Spanish Constitutional Court (RCC) 120/1990, 27 June, the GRAPO case, this Court has sustained that the physical and moral integrity granted in Art. 15 SC implies the inviolability of the person "not only against any attack aimed at harming his body or spirit, but also against any kind of interference with these goods in the absence of the consent of the holder" (FJ 8). However, in the GRAPO case (GRAPO is a terrorist group that began a hunger strike in Spanish prisons) the CC notably admitted that it was legitimate to force-feed the members of this criminal organization because, as prisoners, they were in a special position of subjection to the authorities. Indeed, the SC itself (art. 25.2) states that although prisoners enjoy all their fundamental rights, these have some limitations "derived from the content of the conviction, the meaning of the punishment and the penitentiary act". In particular, art. 3 of Organic Law 1/1979, General Penitentiary Act, 26 September 1979, stipulates that the Government must safeguard the lives of prisoners.

With regard to Spanish national legislation, the right to reject treatment from the public health services was originally granted by the now abrogated art. 10.9 of the General Health Act 15/1986, 25 April 1986. At present, this right is generally acknowledged for all patients who have legal and *de facto* competence in art. 2.4 of Act 41/2002, 14 November, 2002, the Basic Act on Patient Autonomy (hereinafter BAPA). Those over 16 and under 18 years old may also freely exercise this right, except in the case of actions involving serious risk (art. 9.4 BAPA). For their part, if patients do exercise this right, the law compels them to request voluntary discharge or risk being forcibly discharged (art. 21 BAPA).

It is not uncommon for the courts to hear cases of Jehovah's Witnesses who refuse blood transfusions on the basis of their religious convictions. The violation of the rights of these patients also constitutes an assault on their religious freedom, granted by art. 16 SC. In RCC 154/2002, 18 July 2002, the Marcos case, the CC declared the legitimacy of this refusal, supporting the parents of the child Marcos. They had been convicted of homicide by omission by the Spanish Supreme Court for not trying to persuade Marcos to accept the transfusion following his own refusal. Recently, the Decision of the Vizcaya Provincial Court, Second Section, 90147/2018, 26 March, ECLI:ES:APBI2018:564A acknowledged such a right to a legally incompetent adult who had expressed her opposition through an advance healthcare directive.

In short, according to the legal provisions and constitutional case law, it follows that legally competent individuals of legal age, i.e. those not subject to any kind of legal representation or administrative authority and who are *de facto* able to make decisions, are perfectly entitled to refuse medical treatment with no further explanation other than that which is relevant to determine their degree of competence or *de facto* ability to make decisions. Needless to say, their justification does not necessarily have to be shared by the medical team, the authorities or the judge.

There is an ongoing discussion about the case of anorexic patients who regard their thinness as a vital value at all costs and therefore tend to refuse to be force-fed. In these cases, doubts may well arise as to their competence to make decisions given that this type of patients are certainly capable of achieving positive values in the tests that determine decision-making capacity (Ramos Pozón & Robles del Olmo, 2019: 190). However, the fact that anorexics embrace "pathological values" raises the question of whether the illness has not disrupted their value system, although it is not clear if they already thought this way before they became anorexic. If so, the case would be quite similar to that of our musician.

In the case of our musician, there is apparently no such kind of disruption, so it seems clear that no one can legally force him to undergo the treatment. Besides sovereignty over one's own body and mind, Mill refers to the free development of individuality (Mill, 1975: 54). From a constitutional perspective, this concept, of undetermined content, seems to be sanctioned in Art. 10.1 SC, according to which: "The dignity of the person, the inviolable rights inherent to him, the free development of personality, respect for the law and for the rights of others are the basis

of political order and social peace". Similar provisions can be found in Art. 2 of the Bonn Fundamental Law of 1949 *(freie Entfaltung seiner Persönlichkeit)*, in Art. 5 of the Greek Constitution or in Art. 26 of the Portuguese Constitution.

The Spanish CC defines human dignity as "a spiritual and moral value inherent to the person, which is particularly displayed in the conscious and responsible self-determination of one's own life and which entails a claim to the respect of others" (RRC 53/1985, 11 April). It follows that the free development of personality represents the dynamic element of human dignity (Ales Uría, 2020: 50).

However, identifying its content is somewhat difficult. L. Prieto Sanchís characterises it as a general right to freedom by relating it to Articles 1.1 SC (freedom as one of the higher values) and 16 SC (which includes, among others, freedom of conscience). In his view, the SC would thus have provided a kind of general closing rule according to which: "Any action (to do or omit) is allowed, unless it is forbidden by a formal and substantially constitutional legal rule" (Prieto Sanchís, 2003: 256). Accordingly, whatever the SC does not prohibit or prescribe must in principle be regarded as legally permitted, and any limitation of this freedom requires there to be some value that can or must be guaranteed under the rule of law (Prieto Sanchís, 2003: 256). This rule would make it possible to sanction rights that are not expressly granted in the SC, such as the right not to receive treatment. C. Tomás-Valiente Lanuza expresses herself in a similar sense. In her opinion, Art. 1.1 SC establishes a general principle of freedom which *prima facie* guarantees a range of behaviours that have not been granted protection as fundamental rights. This general principle also prohibits the public authorities from limiting these behaviours in an unreasonable, unfair, or disproportionate manner (Tomás-Valiente Lanuza, 2003: 67).

In this sense of general protection, for E. Santana, the phrase "free development of the personality" means "the exercising of the autonomous, free, unconditioned will of the individual" (Santana 2014: 104). According to Santana, even the phrase "full development of the personality", which appears in some constitutional texts and international instruments (art. 3 of the Italian Constitution, arts. 26.2 and 29.1 of the Universal Declaration of Human Rights; art. 27.2 SC) means exactly the same thing. This is because, in her opinion, the law cannot aspire to a kind of moral development of certain potentialities inherent to the individual, as could be inferred from the expression "full development". Therefore,

Santana identifies freedom with autonomy and autonomy with sovereign will.

In contrast and from a more minoritarian perspective, albeit more accurate in my opinion, Prieto Álvarez argues that it is not appropriate to identify the development of the personality with the mere exercise of self-determination of will, since this entails confusing the whole with the part, and the end (development of the personality) with one of its means (individual freedom) (Prieto Álvarez, 2018: 1216-1217). As Prieto Álvarez indicates, a generic freedom of self-determination (which is little more than a mere *agere licere)* is one thing and a supposed general right of self-determination is another (Prieto Álvarez, 2018: 1222).

This author suggests that if we assume any non-prohibited conduct to be a right then we risk distorting the notion of human dignity, which is the cornerstone of law. Indeed, if it is freedom that defines the legal domain, then any conduct, no matter how aberrant, becomes law-protected. But then dignity is ultimately defined by freedom, reversing the CC's doctrine according to which the free development of personality is an expression of human dignity and not the other way round.

In short, the law cannot grant the status of a right to such behaviours which, despite not being prohibited and not compromising the rights of others, might be harmful to the citizens themselves, such as self-mutilation, suicide, etc. The law can grant the status of a right only to those behaviours which contribute to an effective development of the personality as long as this does not entail taking sides between the different ways in which personality is developed (Robles, 1995: 48-49).

However, this does not mean that the law can prevent such self-injurious behaviour either, since it is *prima facie* within the mere lawful field of action *(agere licere)* of individuals, which Law should simply respect (but not assume as a right) by virtue of human dignity. Law, as Montoro states, following Thomas Aquinas, only prescribes doing what is just and avoiding what is unjust in order to safeguard social order and peace, which is its specific task (Montoro, 1999: 252). Indeed, for Thomas Aquinas, Law does not aspire to the ethical perfection of citizens, but is limited to regulating those conducts that directly affect the common good, prohibiting the most serious actions, especially those that harm others (Thomas Aquinas, 2011, I-II, q. 96, arts. 2c.).

In short, in the case of our musician, he is entitled to decline treatment according to the law and the case law interpretation of art. 15 SC but not on the basis of art. 10.1 SC. Consequently, the public authorities must

limit themselves to purely and simply *respecting* his decision without engaging in paternalistic attitudes. However, this legal solution is deficient because an elementary humanitarian duty entails some kind of assistance *(accompaniment)* aimed, in the first instance, at getting the patient to reconsider his decision. Therefore, it is clear that the fundamental rights based perspective is insufficient to address this problem.

3. AUTONOMY AND FREEDOM

Autonomy has become the axis around which Western bioethics revolves. Yet it is necessary to be cautious because an autonomous subject is not necessarily a free agent. This can be seen, for example, in the case of surrogacy, or at least in its commercial version. It has been stated that when the gestational mother comes from a poor country, her (autonomous) decision is influenced by very poor social and economic conditions that compromise her freedom (Nuño Gómez, 2016: 690; Nebrera, 2019: 167-168; Marrades, 2017: 233). Is it paternalistic for States not to admit this practice? Probably yes. However, it does not seem that they act incorrectly.

Thaler and Sunstein defend what they call "libertarian paternalism". Indeed, according to these authors, some types of paternalism would be acceptable to even the staunchest libertarian, provided of course that there is no coercion. It is a prejudice, Thaler and Sunstein argue, to think that there are better alternatives to paternalism, since when an organization or agent makes a choice that affects the choices of others, it is reasonable to choose the one that is best for themselves; the other alternatives would be to choose at random or to opt for the worst option for themselves. The question, therefore, is not whether to be paternalistic, but "how to choose among paternalistic options" (Thaler & Sunstein, 2003: 175). Policies that in any way endorse healthy food or pension plans for citizens are examples of this. The so-called "libertarian paternalism" allows institutions, both public and private, to guide people in directions that will ensure their welfare while maintaining their freedom of choice (Thaler & Sunstein, 2003: 179).

E.H. Loewy goes further. In his opinion it is perfectly acceptable that, once informed, consumers should be left completely free to choose which pair of shoes they intend to buy. On the contrary, this is not desirable in the context of the clinical relationship for a number of reasons, which he

sets out very persuasively in his article "In Defense of Paternalism" (Loewy, 2005: 445-468). It is clearly unreasonable to think that a patient will be able to have complete freedom of choice after a fifteen minute briefing of the possible alternatives and without the experience that the doctor has, even more so when patients are in the midst of an illness that affects their entire existence. To expect a choice to be made under these conditions is, in Loewy's expression, "to abandon patients to their own autonomy", which can be considered an exercise in hypocrisy when it is not hiding a conflict of interests in certain care contexts where savings are the priority. If a patient refuses an indicated treatment, to which the patient is entitled, physicians, in Loewy's opinion, also have the right, if not the duty, to do everything in their power to change their patient's mind (Loewy, 2005: 454).

Many patients are grateful later, according to Loewy, that their initial opinion was not taken into account. Under the pretext of the principle of autonomy, many cases that could have a favorable outcome are left untreated in light of the patient's own values. On the other hand, it is relatively straightforward for physicians to elicit some form of autonomous response in the patient, depending on how they present the alternative. Loewy mentions the case of a mentally competent and generally healthy 90-year-old patient who enters the Emergency Room suffering from pneumonia. He has neither an advanced care directive nor a representative. Usually, after an initial examination, the resident physician will say something like, "now we do not expect this to happen and we will do the best we can to prevent it, but should your heart stop, do we have your permission to jump up and down on your chest, probably break a few ribs and shove a tube down your throat in an effort to restart your heart?" This is also a case of crass paternalism (Loewy, 2005: 458).

With this in mind, it would seem that simply accepting our musician's autonomous decision, without doing anything to dissuade him, could in fact be described as what Loewy calls abandoning patients to their own autonomy. An exercise in paternalism aimed at persuading the patient of the need for surgery would seem to be justified even if the patient has not asked for advice or if he refuses it.

In fact, from a conceptual point of view, unlike a heteronomous action, an autonomous action is undertaken under the control of the subject and so it is a voluntary action. However, not all voluntary actions are free; there are even times when, paradoxically, the more voluntary an action is, the less free it is (Hervada, 1989: 80-81), such as those actions performed

out of fear or in a state of stubbornness. For this reason, stubbornness is a penal mitigating circumstance, because it is understood that the agent is less free when acting in this state, and fear is a vice of the will that entails the nullity of an eventual contract. Beauchamp and Childress cover this assumption under the principle of autonomy, which excludes from its scope not only the case of an individual who acts under the control of another, but also that of persons who are not capable of deliberating or acting according to their plans or desires, since it is then understood that they are persons whose autonomy is diminished (Beauchamp & Childress, 2013: 101-102).

According to Beauchamp and Childress, an autonomous action is one that meets three requirements: 1) Intentionality, that is, that the action responds to a plan. 2) Understanding of the action. 3) Absence of control, either by external forces, or by forces internal to the subject, such as mental illness. While the first condition does not admit degrees, the second and the third ones do, so the determination of the autonomy of an action will ultimately depend on the type of decision to be made. For instance, choosing a university is not the same as undergoing an operation. (Beauchamp & Childress, 2013: 101-102).

Thus, by distinguishing between autonomy and freedom, four possible combinations arise: *a*) A free and autonomous subject: here the question of assistance does not arise; it is this subject that, in any case, must assist others, since it corresponds to the Aristotelian *phronimos*. *b*) A non-autonomous and free subject: this combination is not possible, since the exercise of freedom implies autonomy, as can be observed below. *c*) A non-autonomous and non-free subject: it is possible to apply what Beauchamp and Childress indicate for when autonomy is lacking. For them, the obligation to respect autonomy does not extend to persons who cannot act in a sufficiently autonomous manner, because they are immature, incapacitated, lacking in knowledge, coerced or subdued (as is the case with children), "irrationally suicidal" individuals, drug-dependent patients, etc. *d*) An autonomous and non-free subject: this assumption tends to be overlooked. Leaving aside exceptional assumptions, such as the prevention of suicide, the question arises when the autonomous and non-free individual is faced with an important decision under the partial bias of a monomania, as is the case of the reckless musician.

4. SOME PREMISES OF FREE ACTION. MONOMANIA

The question of freedom has occupied the minds of great philosophers and it is clearly impossible to do it any justice in these lines. Nevertheless, a eudaimonic approach can surely shed light on the problem posed here and justify how monomania compromises freedom even if it does not undermine autonomy.

Aristotle defines prudent (practically wise) persons (φρόνιμοι) as those who are "able to deliberate nobly about what is good and beneficial for themselves, not in particular respects, such as what conduces to health or strength, but about what conduces to living well as a whole" (Aristotle, 2000: VI, 5, 1140a24-27). The determination of the good, in the holistic sense (ὅλος) in which Aristotle conceives it, is not the mere result of an autonomous deliberation, as proposed by Gracia; autonomy is, of course, one of the elements considered by the Stegirite: the good is determined "for itself" (αὐτῷ), not for another. This is not enough, however, for the action to be good in this phronetic sense, since a double premise must concur; on the one hand, an emotional equilibrium, and on the other hand, a teleological equilibrium.

A) AN EMOTIONAL EQUILIBRIUM

There is a tendency to neglect the emotional factor in decision making, focusing on the deliberative moment (Gracia) or on the operation of specifying the principles with more concrete rules (Beauchamp and Childress). Neither of these authors overlooks the influence that emotions and feelings have on the decision-making process. In fact, Beauchamp and Childress devote an entire chapter to the issue of moral character. However, they do not give sufficient practical relevance to the question of virtues, which according to Aristotle, who puts virtue at the center of his ethics, are those called upon to control and canalize the affective flow, which constitutes the underlying energy of human activity (Vergara, 2018: 120 ff.).

Above all, the Platonic idea that emotions should be excluded from the decision-making process must be definitively abandoned. This is tantamount to thinking that a plant can live without water, although an excess of water is equally as bad as a lack of water. Strong impulses, writes J.S. Mill, are only dangerous when they are not properly balanced (Mill,

1975: 57). Strong impulses, he adds, are simply another name for energy. This energy can be put to negative uses, but an energized nature is in a better position to do more good than an indolent or apathetic one. Definitely, the radical separation of mind and body typical of Modernity is especially misguided. As neurobiology has shown, the absence of emotion can be an equally important cause of irrational behavior as an excess of it (Damasio, 1996: 62).

It is unrealistic to think that feelings and emotions distort moral thinking in such a way that one should aspire to a rationality which is free of them. Aristotle puts things in their proper terms when he states that an adequate equilibrium of affective factors not only favors, but also determines or creates, the good decision, while an imbalance at that level produces the opposite effect. Playing a guitar provides us with an analogous example. Producing a beautiful melody does not only depend on plucking the right strings, but all of these strings also need to be tuned with the specific tension required for each one. This is the first thing that all guitar teachers teach their students. In this case, it is enough to adjust the tension of the strings manually and at will. Under the Aristotelian approach, ethics is modulated analogously through acts that influence the disposition of one's will and feelings, but with the non-negligible difference that it is very difficult, and sometimes practically impossible, to modulate such a disposition, due to the inevitable, biologically adaptive and effective mediation of acquired habits.

That is why Aristotle defines prudence as a certain "true and practical state involving reason, concerned with what is good and bad for human beings" (Aristotle, 2012: 1140b3-4) and not merely as a deliberation between different courses of action (Gracia) or a specification of principles (Beauchamp and Childress). The way of being, in fact, is situated on the level of existence, since, as Heidegger notes, being is an open question in humans, something to be determined (Heidegger, 2003: §4). Therefore, this is not a being that merely occurs, but, in this sense, exists and it is this existence that constitutes one's specific being. For Heidegger, the way of being of humans is to exist and this is a lifetime task. In this sense, prudence is an ontical determination that belongs to all subjects who can be qualified as *phronimos* or prudent (practically wise), which must not be confused with the way of being of the cunning one, the *deinos,* which can be evil.

A prudent person is not someone who has a faculty, since, as Aristotle teaches, first you have it and later you exercise it, as in the case of sight.

A prudent person is someone who has constituted a certain way of being through habit, and first you exercise habits and later you have them, although the formula may seem paradoxical (Aristotle, 2000: II, 1, 1103a31-32).

However, it is well known that Aristotle's approach is not merely existential but eudaimonic, implying that every individual is destined to compose the best possible melody, which presupposes, in short, two requirements without which the prudent individual cannot achieve this objective: 1) That the strings, that is, the feelings, are well tuned through virtue. 2) That a good musical score is created when the sounds have been distributed harmoniously. The first requirement is more or less covered by the principle of autonomy. The second one is not and shall be addressed hereafter.

B) A TELEOLOGICAL EQUILIBRIUM

As seen above, principlism addresses the cases in which freedom is lacking in a more substantial way, considering them incompatible with autonomous action. This is because a condition of autonomous action is that one's will must not be controlled by either external or internal forces, a situation which would prevent the moral agent from acting according to a preconceived plan, as would be the case of a person who is overcome with fear. A further requirement of autonomous action is sufficient understanding from the agent, which would exclude, for example, the case of a patient who is stubbornly obsessed with a fixed idea that is, in context, irrational.

By contrast, in the case of the professional musician who refuses an operation that will presumably save his life but that will prevent him from continuing to devote himself professionally to music, the requirements of autonomous action are fulfilled, as long as depression or other mental pathologies are ruled out. If this is so, the doctor and relatives will have to avoid any kind of paternalism and simply accept his decision, without trying to persuade him otherwise unless he asks for advice. They must withdraw from the case or else they would not be respecting his freedom and, therefore, his person.

According to an extremely liberal approach, the exercise of freedom implies the possibility of making mistakes or of harming oneself. Thus, if there is a duty to take care of one's health, there is no freedom to adopt

one regime of life or another, since health care and freedom seem incompatible. If individuals, writes L. García San Miguel exposing this posture, "should be able to threaten their own health and if they are obliged to maintain their health, they will not be free not to do so" (García San Miguel, 1995: 17). However, the aforementioned attitude of the physician would be inhumane and this is a sign that the concept of freedom understood merely as autonomy requires adjustment.

From a more moderate liberal approach, such as that of J. S. Mill (here we nuance his position presented in section 1) intervention in the case in question can be justified. In fact, although for this author the sole end for which mankind are warranted in interfering with the liberty of action of any of their number is self-protection (Mill, 1975: 10), since individuals should be free to act upon their opinions, so long as it is at their own risk and peril (Mill, 1975: 53), he also admits that "Whatever it is permitted to do, *it must be permitted to advise to do*"(Mill, 1975:91, my italics). He adds that, in deciding whether something that concerns only one individual is wrong, "it cannot go beyond dissuasion", so that if one person should be free to persuade, another should be free to dissuade (Mill, 1975: 92).

Drawing on more specific examples, Mill believes that if a man tried to cross a bridge that had been declared unsafe and did not have time to be warned of the danger, someone else could take him and push him back without prejudice to his freedom, for, "liberty consists of doing what one desires, and one has no desire to fall into the river" (Mill, 1975:89). However, when it is a question of possible but not certain harm, no one but the individual concerned can judge the sufficiency of the motives that may lead him to take the risk. Here, the only thing that can be done is to warn the individual of the danger without forcibly preventing him from exposing himself to it (Mill, 1975: 89).

It would appear that the same could apply to our pianist. Although he cannot be forcibly operated on, it seems that it would be legitimate to try to persuade him to evaluate the opportunity represented by the operation, with a view to finally making the best decision by himself. Mill recognizes that human nature is not a machine, but "a tree, which needs to grow and develop in all directions, according to the tendency of the inward forces which make it a living thing" (Mill, 1975: 56). He adds that these tendencies must be developed energetically, but in a balanced way, although it is not clear that Mill takes a teleological approach here.

The idea of equilibrium is clearly present in Aristotle's eudaimonic approach. From this point of view, if it is true that every human being ultimately aspires to happiness, it is questionable that a misguided will can be fully free. For a misguided will might tend to select courses of action that would not be desirable were the subject prudent or had they enough sense, in order to fulfill the ultimate end of human happiness, as was the case by analogy of the man who wanted to cross the bridge but did not wish to fall. As Aquinas states, "to intend evil is neither freedom nor part of freedom, although it is a certain sign of freedom" (De Ver. 22.6). Therefore, this is not only the case when there is emotional imbalance, but also when the good is incorrectly contextualized, since, as Aristotle teaches, the good is determined with a view to what is good in general, that is, for a good life as a whole (ὅλος), not regarding a particular good, such as health, or even music, sport, professional work or a passion.

In a study of coronary patients, it is reported how, after a heart attack, these patients immediately attempt to regain control of their lives and return to the life plan they had adopted autonomously (Johnson, 1991: 15-17). However, given the chronic nature of the disease, this goal is never fully achieved which generates frustration in the case of patients who do not assume the harsh reality of the facts. A chronic disease is incurable and cannot be overcome but this does not mean that it cannot be coped with. For this reason, some patients were grateful at being given a "second chance to live" (Johnson, 1991: 29). In the face of a disease of a deadly nature, these patients developed a new vision of life; one of them pointed out, perhaps somewhat rhetorically but significantly, that the heart attack was "the best thing that could have happened to [him]"; having been asked about it, he responded: "I'll be a better person for what has happened" (Johnson, 1991: 38).This coping can occur even in the case of an irreversible and fatal degenerative disease such as ALS. For instance, the admirable case of M. Schwartz, who while being consumed by this disease declared that in a way he was "lucky", because it allowed him to say goodbye to everyone, as well as to give and receive affection (Albom, 2012: 83).

There is a certain reluctance to discuss goods in an ontological sense which is why talk about values is preferred, but then it is more difficult to substantiate the idea of a teleological balance. Every melody is composed from a basic scale of notes, and life, according to the Aristotelian approach, is harmonized from an analogous (non hierarchical) scale of goods, which the Estagirite refers to as "goods for their own sake" (ἀγαθά καθ'αὐτά)

(Aristotle, 2000, I, 6, 1096b14-23). When speaking of teleological imbalance, I am referring to the existential fact of assigning a disproportionate weight to some of the basic goods of life. The experience of those coronary patients who claim to live more fully after having readjusted and established a new balance in their lives could not be understood otherwise. The same aforementioned emotional equilibrium presupposes, in turn, this type of equilibrium, with which it must be in tune.

A characteristic of the capitalist society is the imbalance generated by the reduction of human subjects to their economic function (Barrett, 1990: 36), to which other aspects or dimensions of existence tend to be subordinated, in such a way that, if people's health and leisure are promoted, it is for the sake of labor efficiency and, therefore, of productivity. There is no doubt that work is an important aspect of human life, but insofar as it is coordinated in a proportionate and well-weighted way with other goods of the same ontological weight (in the Aristotelian, non-Heideggerian sense), such as family, leisure, health, and so on. When everything else is subordinated to only one of these goods, an imbalance is produced which, when a serious illness arrives, and with it the proximity of the end, some patients react by trying to rebalance them.

Humans usually subordinate some goods to others, and this is not a problem, since many are simply a means to attaining others, such as a vaccine to maintain health. The problem arises with those goods that are goods for their own sake, such as work, play, leisure, a life partner, health or spirituality, and not by virtue of others. Monomania, which was very fashionable in the eighties, with slogans of the type "crazy about music" or "crazy about sports", does not affect the autonomy of the individual, but it does affect freedom, since it undoes the type of balance referred to here. It is a subject that cannot be addressed in any depth in these pages, but, from an Aristotelian point of view, it is clear that individuals realize themselves as such holistically. If the premise that individuals seek happiness is accepted, when in fact they adopt, even autonomously, a poorly conceived life plan because it entails a serious imbalance due to its one-sidedness, they are basically choosing what they do not want, which does not seem to be an exercise of freedom. As Mill states, one is free for everything except for not being free (Mill, 1975: 95).

The word "passion" is illustrative and refers to both the emotional and the teleological aspects discussed here. In principle, when saying that individuals are passionate, the implication is that they put a great deal of energy and feeling into all their actions. Mill states that this is not bad in

itself or it can even be good. This type of personality can be contrasted with the phlegmatic one, which tends to apathy. Now, if we say that individuals act out of passion, we claim that their freedom is somehow compromised. The same thing happens at the teleological level. If individuals have a passion, for example music or sport, it would simply appear that they have a strong liking for this type of activity, which is healthy. The problem is when that passion becomes monomania and everything revolves around it.

Whoever acts under this bias does not seem to act freely and this is a reason that justifies the protection of such persons, even if they act autonomously and do not solicit advice.

5. THE DILEMMA OF AUTONOMY

Principlism is committed to analyzing patients' quality of life (Beauchamp & Childress, 2013: 171), but it does not give equal consideration to the quality of their freedom. The consequences are significant, because if the first concept leads to the neglecting of certain patients as regards the low quality of life resulting from a procedure, the second one is sensitive to the fact that painful processes are a crucial moment in human life to reformulate poorly made life plans. To abandon patients to their own autonomy, uncritically accepting a decision made at an early stage of the complex, transient process involved in the experience of suffering, goes against the principle of beneficence, no matter how strongly the decision is confirmed by considerations about quality of life or coherence with the values that the patient has adopted so far in life.

However, this does not mean that the doctor or anyone else is entitled to substitute the patient's will, since patients are the only ones entitled to define their life plan. As Mill says, a man cannot get a coat or a pair of boots to fit him unless they are either made to his measure or he can choose from a wide selection; "and is it easier to fit him with a life than with a coat, or are human beings more like one another, in their whole physical and spiritual makeup, than in the shape of their feet?" (Mill, 1975: 64). As previously observed in the Aristotelian notion of prudence, a prudent decision must be made by the one concerned, for it must be an autonomous decision. The physician may know what is good for the patient from a strict health-related point of view, but only the patient can put the decision to be made in the broader context of what constitutes a

good life for him or her. This means that substituting the patient in the decision making process can be unjustifiably paternalistic, since the prudent decision is the one that is in tune with the whole of life in a holistic way, the full understanding of which is only within the reach of moral agents themselves. It is not, however, a question of replacing patients, but of helping them to make the best decision for themselves.

According to E. D. Pellegrino, the physician has the responsibility to ensure that patients make good decisions in the fullest sense, that is, not only for health, but from the point of view of what is globally good for them, which is something that is not automatically inferred from what may be a scientifically correct decision (Pellegrino, 2006: 68). Pellegrino bases clinical ethics on the classic notion of *humanitas*, which, in view of the patient's situation of vulnerability, establishes that the professional has the obligation to seek the good of the patient. This does not mean, however, that the physician should adopt a classic position of authority and, on the basis of specialized training, decide what is best for the patient, but rather that it should be the patients themselves who make an informed decision based on their own values. Consent, in Pellegrino's opinion, is not only a legal notion but also a moral one and there can be no valid consent when information is withheld or manipulated, when freedom is lacking or when there is insufficient reflection on the values at stake (Pellegrino, 2006: 68).

According to this, it does not seem valid either to abandon patients to their own autonomy or to decide paternalistically for them. For this reason, both Loewy and Pellegrino emphasize the need to take time with patients. Both professionals and family and friends must, in turn, show patience, avoiding, as G. Marcel states, changing the rhythm of the other for their own rhythm. They need to have faith in the patients' process of growth or maturity, all the while not appearing to be simply leaving them to their fate (Marcel, 2005: 51). As Cousins explains, one of the most important things patients need from their doctors is time; time to be listened to, time to calm down, to explain things, and so on (Cousins, 2006: 101), that is, to be accompanied.

The patient must be both autonomous and free, and this second point is often a conquest that can only be achieved through pain and suffering. For this reason, neither is it good to decide for patients, nor is it good to urge them to decide. They should be given time, which means having the capacity to suffer with them and accompany them in their pain. This is not so much a question of quantity, but of quality.

Patients suffering from serious illnesses may not have the opportunity to make a full recovery and overcome the disease, but they may eventually learn to live with it. This process takes time, sometimes a substantial amount. According to Kübler-Ross, there are five phases of grief: denial, anger, compromise, depression and acceptance (Kübler-Ross, 2002: 59 ff.). Without real accompaniment, and not just formal accompaniment, it is easy for the patient to stagnate in the first two phases. A patient who has been diagnosed with a serious illness is in an extremely vulnerable situation and at first reacts in a way that is not always reasonable. This is natural and it would be cynical, as Loewy would say, and inhumane, as Pellegrino would say, to latch on to a decision made at this time, however autonomous it may be.

In "The Book of Job", Pellegrino draws interesting lessons for health care professionals from the book of *Job,* which he considers a kind of moral *vademecum* of accompanying the seriously ill patient (Pellegrino, 2001: 179-190). Job does not understand the reason for his suffering for he is a just man and he does not conceive that God will punish him in spite of it. That is why he reacts angrily and with great desperation. Then his friends come to see him and for the first few days remain mute by his side, accompanying him in his pain *(Job:* 2, 12-13) but then they begin to argue with him and exasperate him. The right attitude is not the second one, but the first. When patients endure moments like this, they should not be reproached for the unreasonableness of their position, nor should the debate attempt to be won by arguing against them, nor should they simply be agreed with. Professionals, says Pellegrino, should help patients express themselves, with respect for their dignity. In this way, they negate their patient's alienation from the community and they recognize that compassion and patience are required (Pellegrino, 2001: 188).

One of the tests proposed by Gracia of the consistency of a well-deliberated decision (along with those of legality, universality and publicity) is to ensure that the decision taken can be sustained over time, so that it has not been the result of an emotional outburst. I believe it is important to take this control factor seriously, not as a mere hypothetical exercise, but as an effective way of giving patients time to reach the point where they can freely embrace their own destiny. In this sense, more than of paternalism we could speak, paradoxically, of *self-paternalism,* with full awareness of the paradox this entails. Medical professionals need to take the time, and patients need to have patience with themselves and cope

with their despair to be able to reach the moment when they are in a position to make a truly free decision.

The biojuridical approach is insufficient to address this challenge. The aim of Law is to ensure that the rights of the patient are respected, but only bioethics fosters a real and effective process of accompaniment which extends beyond the mere respect of the patient's rights. There is no space to develop the following idea here, but perhaps European principlism (Kemp &Rendtorff, 2008), which displaces the principle of autonomy from the central axis of bioethics and introduces the counterweight of the principle of vulnerability, can be a particularly responsive approach to the situation of vulnerability and fragility in which patients find themselves in the care context, particularly when embarking upon the last chapter of life.

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Óscar Vergara
Universidade da Coruña
oscar.vergara@udc.es

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