



Scientific Contribution

Towards an ethics of immediacy

A defense of a noncontractual foundation of the care giver–patient relationship

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Abstract. In this article, I argue that the relationship between patients and their health care providers need not be construed as a contract between moral strangers. Contrary to the (American) legal presumption that health care providers are not obligated to assist others in need unless the latter are already contracted patients of record, I submit that the presence of a suffering human being constitutes an immediate moral commandment to try to relieve such suffering. This thesis is developed in reference to the French philosopher Levinas and the Dutch theologian Schillebeeckx. An expanded version of the biblical parable of the Good Samaritan serves as test case.

Key words: contrast ethics, hermeneutics, Levinas, moral discernment, moral obligation, moral strangers, narrative ethics, patient–care giver relationship, theory of ethics

Introduction

Unfortunately, it is already old news, even a trivial statement, if I contend that the covenantal relationship between physician and patient is dwindling. Whatever the different causes may be – moral pluralism, super-specialization, medical paternalism, managed care – the dissolution of the covenantal care giver–patient relationship seems an irreversible *fait-accomplé*. And so bioethicists and health lawyers alike have set out to construct new models for this relationship.

The most successful new model seems to be the contractual model. The contractual model can boast three centuries of historical roots (e.g. social contract theories and libertarianism). Given its heavy reliance on individual self-sufficiency, it also fits perfectly the socio-economic and legal structures that are in place in most western countries. Some nations (e.g. the Netherlands) have added a section on the “therapeutic contract” in their civil law codes, specifying the rights and obligations of the contractants toward one another. And even though the nation farthest ahead in this regard, the United States, does not yet regulate medical practice from the perspective of contract law (but primarily of tort law), the latest proposal for a Federal bill on patient consumer rights reveals that the physician–patient relationship is commonly thought to belong in the same category as other commercial (i.e. contractual) relationships.

Unlike covenantal relationships, contractual relationships are characterized by an element of mutual distrust. This distrust is not necessarily caused by

suspicion about the possibly bad intentions of the other person in the relationship. Rather, it is caused by what Engelhardt (1996) has called *moral strangeness*. The contractants, and likewise the contemporary care-giver and patient, meet one another as moral strangers. Even if they know one another as neighbors down the street, mates in the soccer team, or as cousins, chances are they live in different moral worlds. Whereas in a covenant both partners come together in and because of a joint moral understanding, the contract is supposed to pull and hold together two strangers who may well oppose rather than complement one another.

Etiquette, tradition, common usage, and existing routines notwithstanding, care giver and patient no longer are thought to have any specific moral obligations toward one another until they enter into a mutually agreed upon therapeutic contract. This is, once again, most obvious in the American context. A physician (or any other health care provider for that matter) does not have a legally binding obligation to assist patients in need, unless these patients are already his/her patients. Whether an unknown patient is suffering a cardiac arrest or a terrible bout of tooth ache, the doctor may bluntly refuse to assist the patient without suffering any legal consequences.

One could speculate that the legal tolerance of such care-less omission is related to the difficulty in making a legal case about omissions (as opposed to commissions). When someone commits a wrong, it is relatively easy to attribute blame. But when someone fails to prevent or undo a wrong, it becomes much more difficult to prove beyond reasonable doubt that

this particular person is accountable. If this speculative explanation were largely correct indeed, one would also expect that in the realm of ethics – where issues of evidence, blame and punishment are of secondary importance – a much stronger call to care for those in need could be found. However, many professional codes of ethics do not advocate a clear ethical obligation to assist patients in need either. Instead, they underscore the provider’s right to select (or refuse to accept) patients as he or she sees fit.

This absence has always struck me as very counter-intuitive. I have always felt that being human, but *a fortiori* being a professional health care provider, comes with an obligation – at least a *prima facie* obligation – to assist other human beings in need. And yet, such an obligation appears to be merely intuitive, without additional foundational support, and hence a matter of supererogation at best, rather than a universally binding duty. Contemporary libertarian ethicists have done quite a convincing job in pointing out that we are, if not *de iure* then at least *de facto*, moral strangers to one another. Egalitarian ethicists have stressed the essential equality among human beings and the necessity of thinking about justice from behind the veil of ignorance lest we discriminate; in other words, we should neutralize any kind of familiarity that is likely to bias our judgment, considering others (and ourselves) as unknowns instead, as moral strangers.

In this article I argue against libertarian as well as egalitarian models of ethics, in particular, health care ethics. I do not believe our “postmodern” situation is as pluralistic as many have maintained – but I readily admit not being able to muster sufficient empirical evidence for my disbelief. I am more confident in rejecting the libertarian and egalitarian answers to this presumed pluralist predicament – but I must refer the reader to another publication for my arguments supporting this rejection (Welie, 1998). In this article, I propose an alternative foundation of the care giver–patient relationship. I propose an ethics of immediacy. I will describe and defend this alternative via a hermeneutics of significant moral experiences. Some of these are personal experiences but recognizable nonetheless – or so I believe. Other moral experiences have already been proven to carry exemplary force, such as the Parable of the Good Samaritan. In centuries past, this parable has often been invoked by health care providers as a paradigm analogy to the care giver–patient relationship. A careful reexamination and reinterpretation of this powerful parable is hence in order.

A sense of embarrassment

A few years ago I visited Venice and was fortunate to have a hotel with a view overlooking a beautiful canal. But in order to see all that splendid wealth, I also had to face a beggar who would be sitting slightly below me, in a corner of the bridge from the early morning till the late evening, day after day. Though eager to fully enjoy the view of the canal, I was embarrassed and I found myself ‘peeking’ out of the window, hoping he would not look up.

This is but one example of many such embarrassing moments. It has happened many times to me – and I venture to guess that this experience is shared by many – that I came across a blind person, cautiously feeling his way past the many hindrances on his path, hindrances that I simply saw, without even becoming conscious of them. And I felt quite embarrassed. I have come across a young woman with muscular spasms whose obstinate limbs and cramped face made me feel quite embarrassed. I have gazed through the transparent casing of a neonatal intensive care unit to a tiny, 600 gram newborn, totally vulnerable, totally dependent, struggling for life, and I felt quite embarrassed.

So why did I feel embarrassed? I was not to blame for the poverty of the beggar on the Venetian bridge. It certainly was not my fault that the blind person could not see, that the girl’s neuro-muscular system was failing her, that the tiny baby was born prematurely. And yet, I felt embarrassed, taken aback, uneasy and even ashamed.

The egalitarian ethicist may respond that this embarrassment is caused by the inequality between *my* wealth and health, and *their* poverty and distress. After all, such poverty and distress is at odds with the equality of all human beings. Since the beggar is a human being, *like me*, since the disabled and the sick are humans, *like me*, they have a right to an equal share in the available resources. Or at least, they should have an equal opportunity to attain an equal share of those resources.

But this explanation of my embarrassment is highly problematic because it disregards the otherness of the other human being. By viewing the other in the context of *my* wealth and *my* health, or even by measuring her distress against *our* societal standards of well-being, I am reducing the other to MENESS or COMMONNESS. This is what happens, for example, when the disabled are labeled as the physically challenged, good intentions notwithstanding. Apparently, well-ness, happiness and fulfillment involves certain *commonly* shared goals that the disabled are just as able to attain, and should attain, even though, admittedly, it is more challenging for them to get there. Yet there is no true

appreciation for the unique condition of the disabled person herself.

The libertarian ethicist may hence reply that the only way to respect the individuality of each and every person, disabled, sick, poor, or otherwise vulnerable, is to ‘back off’. In principle, the care provider should ‘leave each patient alone’ rather than paternalistically coaching them toward goals that may not be congruent with the patient’s own goals. Supporting people (necessarily) involves assuming some responsibility on their behalf, which implies taking away some of the patients’ own responsibility. And so in this libertarian perspective, my sense of embarrassment actually entails a risk to the dignity of those fellow humans.

Both the egalitarian and the libertarian ethicist will dismiss my sense of embarrassment; or at any rate deny that it constitutes a trustworthy moral guide. Not so according to the French philosopher Levinas. Rather than dismissing this sense of embarrassment, he takes it as his ethical starting point. Not only am I embarrassed by the other; the other presents herself as “ethical resistance that paralyzes my powers” (Levinas, 1992, p. 199). The other defies my autonomy and appears as heteronomy. In the face of the other, I can no longer determine my own norms but am forced to accept that there is another norm that overrides my autonomy: The other human being.¹

The other does not merely *imply* a norm, the other *constitutes* the principal moral commandment not to deny my fellow human’s existence, that is, ‘Thou shalt not kill’. In wondering why I should not kill, why I should respect my fellow human’s autonomy, I have already denounced her. In facing me, the other presents the negation of her own negation. Or positively formulated, the other always appears as demanding respect, as heteronomy (Burggraeve, 1986, pp. 404–405).

This heteronomy is absolute. It is completely independent from me. It is not first and foremost that the other is a human – like *me* – and shares in a set of human rights that she *and I* have agreed upon. It is not a matter of *me* owing her out of past promises. Her otherness is so radical that it not only resists any reduction to the first person (I, Me, My) but also to the second person (You/Thou). My fellow human is always a third person, a He or She (rather than You or even Thou) (Levinas, 1969, p. 34).

The other presents herself first and foremost as commandment, not as phenomenon. I do not *perceive* the other human being as I perceive any other objects in the world which I can describe and to which I can attribute certain characteristics, including moral characteristics. “The epiphany of the face is ethical” (rather than real). In facing me, the other always affects me in the imperative rather than indicative mode (Levinas, 1969, p. 104).

Negative versus positive contrast experiences

The epiphany of the face is ethical. The other appears to me as a moral commandment even before I have acknowledged her humanness. A similar argument is made by Schillebeeckx when he argues that the basis of morality is formed by so called contrast-experiences. The very moment that one learns about a young child being used as a guinea pig for medical research, one knows that this ought not to happen. No analysis is needed about the humanness of this child and its consequent intrinsic dignity; no determination is needed about the rights of this child vis-à-vis my rights; no utilitarian calculus is needed to determine whether such medical research is justified given the potential benefits for others. In fact, any such calculus would be utterly obscene. The contrast between this event and the scope of acceptable events is too extreme. There is no further analysis needed to yield certainty about the immorality of that event (Schillebeeckx, 1968). The experience of contrast itself provides that evidence and presents the *obligation* to try to undo the contrasting event. This obligation is undeniable.

Although Schillebeeckx’s example illustrates quite well the point I am trying to make, his perspective – and I would suspect Levinas’ as well – is limited in that it focuses on *negative* contrasts. It seems that these contrasts only occur when certain events present themselves as utterly *immoral*, as *disvalue*. Surely, an ethos of care is invoked by the recognition of need, which is a negative contrast experience. But such an ethos must also be guided by the recognition of what could be of help. It may be possible to develop an *ethos of negation* out of contrast experiences, but such experience cannot be the basis of a genuine ethics, Mieth contends. Ethics cannot do without an innovative approach, an approach in which genuinely new options are opened, rather than mere negations of the negative (Mieth, 1977, p. 102).

Obviously, horrendous events such as using children as guinea pigs for medical research, shake our comfortable life and move us. But so can positive contrasts. We can be moved by the birth of a child, the endurance of a colleague suffering from multiple sclerosis, the courage of a hospice nurse. These events, too, can shatter our autonomous self-righteousness. Such positive contrasts may provide less clear an indication as to what the norm set by their otherness implies than the negative contrasts presented by horrendous events. But they do set a norm. Their appeal provides guidance and direction. Both disvalues (which repulse us) and values (which attract us) present themselves through contrast experiences, challenge our autonomy, and set another norm, the norm of the other, the other as norm.

Embarrassment and fairness

It is important to bear in mind that Levinas' proposal does not amount to agapistic ethics. He explicitly adds that this heteronomy is not grounded in love. Love is blind and as such unjust toward all third persons. Yet the otherness of my fellow human is normative precisely because she is that third person. Love precludes the genuine respect which I owe my fellow humans. In this sense, the law of justice precedes the law of loving my neighbor (Levinas, 1969, pp. 118–119). Interestingly, when Christ told his audience to love their neighbors, and was asked next, 'but who is my neighbor?', He evaded the question and told them what acting neighborly was all about. The Samaritan in the parable was good because he cared for the victim he met on the road. But Levinas wants to expand the obligation to care for one's neighbors: I am responsible not only for those who I meet, let alone for those who I want or like to meet. I carry responsibility for any and all others.

But how can this be possible? Is this not too excessive a task for humans? I remember visiting Auschwitz. In startling contrast with the peaceful rustle of the softly green poplars outside the reddish brick buildings, the pictures inside – silent, black and white, momentary representations of a dark protracted ordeal – sufficed to yield an undeniable verdict of immorality. But this verdict not only concerned those who did it all. It also hit me, and I had to leave. Not because the pictures were so painful, but because they shattered my self-righteousness. One cannot watch it and remain unmoved. One either moves into it (which, given the historicity of the event, is no longer possible), or one moves out of it. And so I did.

If the Auschwitz example is an extreme illustration of Levinas' staunch thesis, it is not difficult to think of more everyday examples. I already mentioned the Venetian beggar. The world, including the rich Western world, is filled with beggars, homeless people sleeping in boxes, mentally handicapped patients roaming the streets, sick and malnourished children, elderly dying in loneliness. Leading an easy and bountiful life myself, I can easily *argue* that I cannot be held responsible for all that poverty and distress, but I cannot sincerely *tell* the sick or destitute person so who looks up and begs for some assistance. Nor can I acknowledge this fellow human being, recognize her needs, even admit that something ought to be done, yet respond that there are others who will take care of her. I either face the needy person and offer prompt and caring assistance, or I look the other way, accelerate my pace, and move on to the next distraction – as I almost always find myself doing.

A lack of embarrassment

My example about the Venetian beggar, and likewise Christ's parable about the Good Samaritan, does raise a new question however. I have readily admitted that my personal failure to give to the Venetian beggar was immoral as is my failure to offer prompt and caring assistance to the manifold other needy people whom I encounter. But someone else may object that she never senses any kind of embarrassment when encountering a beggar, a sick person, a suffering fellow human being. Lacking a sense of embarrassment, she would not deem it immoral to pass the needy.

Christ was likewise *assuming* that His audience would agree without question that the priest and the Levite behaved immorally by passing the battered victim. But what if we asked the priest and the Levite from Jesus' parable why they passed the sacked traveler? What if (1) the priest answered that he simply did not believe the man was in any serious need? What if (2) the Levite responded that he did notice the man's wounds, but really and sincerely discerned no moral obligation to assist him? Either response would undermine an ethics of immediacy as outlined above. Either response would offer the modern health care provider the necessary justification for picking and selecting certain patients, while bluntly refusing medical assistance to others. Likewise, it would enable health care insurance companies to cherry-pick some patients while neglecting others. Let us therefore examine these two responses by the priest and the Levite more carefully.

(1) The priest's reply that he did not believe the man was in any serious need, is aimed at undermining the factual basis of an ethics of immediacy. If the one person understands and assesses the facts of a situation differently than another person facing the same situation, it is only logical that the former would also take a different moral stance toward this situation than the latter. There are plenty of historical examples that show that certain behaviors – nowadays considered immoral – once were acceptable because the facts (rather than the moral norms) were assessed differently. For thousands of years slaves were simply thought of as objects of property or as subhuman beings. Women suspected of being witches were first weighed to assess whether they really were witches. And nowadays many talk about pre-embryos and post-persons to express that the newly conceived human being and the patient in a persistent vegetative state are ontologically different from genuine mankind. Hence, any heteronomous sense of moral obligation toward them (as Levinas would have it), suggesting to treat them in a normal, humane manner, is simply deemed mistaken for based on incorrect facts.

Although the question about the factual basis of our moral obligations is an important one, it is not distinctive for the kind of ethics espoused in this article. As Prichard has noted in his article on *Duty and the Ignorance of Fact*, any ethical theory faces this problem. Should the deontologist walking across a bridge and hearing a loud splash only react when *in fact* somebody has fallen in the water who, moreover, *is* drowning? How is a utilitarian able to assess the consequences of various alternatives when the future is, by definition, never certain? Prichard (1949, p. 25) concludes that our

obligation depends on our being in a certain attitude of mind towards the situation in respect of knowledge, thought, or opinion. This . . . can be described as the subjective view of the basis of an obligation, not in the sense that no acts are really right or wrong, but in the sense of the view that the ground of an obligation lies in some state of the man's own mind.

So what about the person who provides a different assessment of the facts? We may try to change his view on the facts. But more we cannot do, Prichard argues.

When our attempt to change his opinion about the facts is over, then, whether we have or have not succeeded, the question whether he is bound to do the action will turn on the nature of his opinion about the facts. Thus we think that, provided the would-be torturer remained, in spite of all we have said, in a very high degree confident that torturing, and torturing only, would save the heretic, he would be bound to inflict the torture.

Prichard is quick to point out that this conclusion does not force us to go along with it:

No doubt we also think that we should take steps to prevent him; but here there is no inconsistency. And, in fact, we not infrequently think ourselves to do some action which will prevent someone else doing something which he is bound to do. Indeed, if this were not so, few would fight conscientiously for their country (pp. 30–31).

Hence, we must conclude that if the priest in Christ's parable was genuinely convinced that the sacked traveler was not in any serious need, he did not act immorally in passing by. But then, the point of the parable is not to teach us how to find out who is or isn't a needy neighbor, but what it is to act like a neighbor (Mieth, 1977; Winch, 1987). The moral thing to do was to help the sacked traveler given his real needs. The priest may nonetheless remain beyond reproach if he sincerely did not recognize those needs. And the same would be true of the physician or insurance company who turns away

certain people. If the care provider sincerely believes that those people were not in any serious medical *need* (but merely *desiring* a particular service, for example whiter teeth or a smoother skin) he could justifiably conclude that he is not morally required to fulfill their desires.

(2) So what about the Levite who (in my version of the parable) responded that he was well aware of the victim's needs but discerned no call to provide assistance? Does every recognition of one's fellow human's suffering necessarily imply a call to undo it or at least, withdraw from causing it? Surely, the pictures in Auschwitz are in such contrast with our common moral sense of what ought to be the case, that those images invoke an undeniable response to undo such suffering or at least, withdraw from causing it. Anybody denying the immorality of the holocaust and the implied obligation to undo such horror is simply unconvincing. But could the Levite have been sincere when he claimed that he discerned no call to assist the sacked traveler? Could the nurse (who seems to treat a lonely and anxious patient callously and cursorily) argue convincingly that he discerns no obligation to spend extra time with this patient? Could the orthopedic surgeon who sends away an uninsured farmer with a complicated ankle fracture convincingly explain that she simply doesn't feel obliged to even examine the ankle?

According to Winch the Samaritan in Jesus' parable "responds to what he sees as a *necessity* generated by the presence of the injured man" (Winch, 1987, p. 157). Now Phillips has objected to Winch that we cannot take for granted that the situation will always generate a *particular* morally necessary perspective: "Winch does not emphasise that the response to suffering he is discussing is *one* moral response among others. When Callicles said 'Suffering does not happen to a man', he was not being indifferent to suffering, but responding to it morally in a way very different from the response of the Samaritan" (Phillips, 1989, pp. 126–127). Phillips' own example, however, calls into question his objection. Could there have been a morally appropriate response to the needs of the sacked traveler other than the Samaritan's?²

Maybe the Samaritan's parable does not allow for another interpretation. But that does not sufficiently counter Phillips' objection. Let us have another look at the Venetian beggar. As on previous days, I was once again 'peeking' out of my window over the beautiful houses, the canal, the bridge below, and hence the beggar. A couple of well-to-do American tourists walked by. When the woman reached for her wallet, her husband remarked that donating to a beggar only fosters laziness.

While some people arguing along these lines may

be soothing their troubled conscience, others seem to be very sincere in their belief that a beggar is better-off not being given money. On what grounds may I conclude that the woman's response was morally proper and her husband's was not? Surely the fact that I too felt embarrassed by my luxuries contrasting with the beggar's poverty does not suffice. Neither does it matter very much that many people passing the beggar on the bridge seemed not in the least embarrassed by him.

I would expect, however, that if we were to ask all these persons who nonchalantly passed the beggar, whether they had at least noticed him and become aware of his needs, most of them would answer affirmatively. In fact, the American tourist's argument that donations only stimulate begging was neither intended to deny the beggar's poverty, nor the moral obligation of the rich to do something about it. The remark only concerned his wife's *particular practical* response to those needs (i.e. giving money rather than stimulating employment). Similarly, the argument that begging is offensive and that, therefore, society cannot condone begging, does not concern the fact of the beggars' needs nor the moral duty of society to seek a solution, but only the beggars' *particular strategy* for trying to solve their problem, that is, by public begging.³

But again, would it not be possible that one of those people nonchalantly passing the beggar would acknowledge the fact of the beggar's suffering yet *not* conclude that at least something ought to be done to relieve the suffering (whether by simply donating money or by encouraging him to find work)? After all, Callicles had already argued that the whole debate about suffering, in particular about suffering injustice, is an invention of slaves and other impotent people to their own advantage (Plato, 1952, §483).

Although the possibility of more than one moral response to the sympathically perceived suffering of my fellow human cannot be excluded *a priori*, the examples of the Good Samaritan as well as that of Callicles seem to suggest otherwise. While we may disagree about the *particular practical strategy* to be employed in any given case, the *principal moral response* to which we are called in the face of needy others is evident and beyond dispute. Admittedly, I have only provided a handful of examples, too few to draw any kind of general conclusion from it. But then, within the ethical framework I am trying to defend, a general rule of the kind that there is always only one moral response possible to the established need, simply could not be discovered. For the point I am trying to make is that it is *only* in our meeting the other human being that the moral obligation can be established; never in any kind of generic rule.

It is the situation (rather than a precognized moral

rule or principle) that speaks. More precisely, it is in the face of my fellow human's suffering that it becomes clear to me that I ought to assist this person. Granted, the moral obligations thus revealed are literally *prima facie* obligations. It is obvious at first sight that I ought to assist the sacked traveler, the beggar, the child suffering from a severe tooth ache, the man collapsing with a cardiac arrest. This obligation to assist is evident even if, next, I am puzzled and uncertain *how exactly* to do that. The heteronomy which the other is, is not always and immediately established in full. It will often require a conscious effort on my part to learn more about my fellow human, to nurture our relationship in order to offer effective help. But any attempt to prove externally (i.e. external to the situation) *that* I ought to assist her, will fail. At the very moment of presenting their point of view, the Nazi physicians proved themselves wrong, and likewise Callicles, and the Levite from the (revised) parable who denied his moral obligation in the face of his suffering neighbor. Jesus, on the other hand, in answering the lawyer's question 'who is my neighbor' with a story rather than a rational definition, proved Himself right.⁴

Supererogatoriness

But let us look one more time at the parable of the Good Samaritan. We have concluded that the priest who denied the victim's needs, is not very convincing; but if he was really sincere we could not blame him for passing by. The Levite who acknowledges that the sacked traveler was in need but denies he henceforth should have offered help, is even less convincing. So what about the Samaritan who picked up the wounded man, lifted him onto his donkey, brought him to the inn, and even paid for his care? He evidently did a good thing; but did he *have* to do it? Was he morally obligated to do all of this, including paying for the man's care, all of the man's care, upfront, without even knowing how much money the victim had left in the bank?

Surely, the physician who is willing to offer medical assistance to a mugged and beaten tourist may require the patient to call his bank for a new set of Traveler Cheques or to wire some cash. Surely, the Emergency Room clerk may require the patient to write down his name, address, social security number, name and address of a close relative, name and address of his employer, name and address of his relative's employer, name, address, group number, policy number and telephone number of his insurance, name, address, group number, policy number and telephone number of any additional insurance source

available to him, name of any other person's involved in the accident, that person's relative's name and address, that person's closest relative's name, address, etc. Surely, the patient may be asked to sign as the party responsible for the payment as well as waive his confidentiality if securing payment will so require. All of this seems only fair.

It would seem, then, that the Samaritan's volunteering to pay for any and all expenses was certainly good but he did not have to do it, notwithstanding the patient's suffering. It was, as Dancy (1993, p. 127) puts it, "above and beyond the call of duty", a supererogatory act, "which it is not wrong of the agent not to do".

Now, the Levite had denied that offering assistance was a good response, the only good response. Hence, the Levite maintained that he was not obligated to offer assistance. After all, if something is not a morally good act, one cannot be morally obligated to provide it. But the reverse does not seem to hold. The Samaritan's gratuitous care was certainly good. Nevertheless, the Samaritan was *not* obligated to provide it. The congruence between, on the one hand, what *is* needed and hence *is* a morally good act, and, on the other hand, what one *ought* to do in the face of those needs, seems incomplete after all.

I could bring forward in defense of the congruence thesis that the biblical example does not prove that the Samaritan *himself* does not feel obligated by the needs of others. It is only us, the bystanders, who do not consider such altruism obligatory. The problem, however, is not why the Samaritan acts as he does, but how it can be that we judge his behavior to be moral but not obligatory. Apparently we are well aware of the patient's dire needs, and recognize the call for assistance (for this is the basis of our judgment that providing assistance is morally good). Nonetheless, we do not experience an obligation to assist. Neither would we make a different assessment of the – presumably incompatible – interests involved (those of the patient in need versus those of the care provider who has to earn a living too), leading to a different sense of duty (for example, one ought first and foremost to guarantee one's own survival). This cannot be the case because we tend to praise rather than blame the self-sacrificing Samaritan. Thus, we too take the interests of the needy patient to prevail. Nevertheless, we would not have blamed the Samaritan had he failed to assist the patient.

This seemingly inconsistent verdict – it is morally good to sacrifice oneself, but it is not morally wrong not to do so – is understandable only if we differentiate between the first and the second parts of the verdict. The first concerns the morality of the *act*, the second the virtuousness of the *actor*. The moral-

ity of the act depends on the degree to which the act can be considered an adequate response to the call that presents itself (prior to any willful choice on the side of the actor who is called to respond). The morality of the actor depends on the degree to which the actor's choice, whether or not to respond to the call, is permissible. Sympathizing with concentration camp prisoners, we may conclude that they ought not to be treated in such a barbaric manner, as well as find the camp guard's weakness or even corruption of will insufficient an excuse not to treat those prisoners more humanely. On the other hand, sympathizing with the patient's needs, we may conclude that altruistic assistance is in order; but being well aware of the weakness of our own will, we may withhold a verdict on those care givers who do not provide assistance for free. Thus, the problem of supererogation is a matter of differentiating between act and actor, between a verdict of justifiability and a verdict of culpability. The first verdict necessarily precedes the second, and it is with the first that we are concerned here.

Conflicts of duty

So what about the last person in the parable, the inn keeper? The abbreviated version of this story as it appears in the bible fails to inform us why the Samaritan pulled his wallet in the first place. But here's what really happened. When he knocked on the door of the inn, the inn keeper opened, peeked out, and when he saw the patient, started negotiating about a fair room price. It was only after the Samaritan had paid him some cash upfront and left him his own credit card number, that the inn keeper agreed to assume the care for the patient.

Was it morally wrong of the inn keeper to demand payment? Shouldn't he have welcomed the patient in his inn and reject the money offered by the Samaritan? After all, the Samaritan had already done his share; he had picked the patient up, cleaned his wounds, hoisted him onto his own donkey, and walked the remainder of the way to the inn. But then again, the inn was on the verge of bankruptcy. The inn keeper was chased by creditors and feared that he and his family would lose the inn and become homeless and destitute. He was faced with two conflicting needs – to care for the patient as well as to care for his family – and he had concluded he was obligated to meet the needs of the latter rather than the former.

The inn keeper knew that housing the patient for free was the morally good thing to do. Yet he decided that he should not do so. Once again, it seems that the congruence between what *is* that morally right thing to do and what *ought* to be done, is incomplete. Naturally,

this objection cannot undermine the moral cogency of the needs themselves, for without it, there could never arise a conflict of *duties*. It is only because the inn keeper feels obligated to act on behalf of his family as well as obligated to act on behalf of the patient that he finds himself caught in a conflict of duties. The objection does, however, question the feasibility of such immediate moral concern functioning as moral *guide*.

Given two conflicting duties, one may be tempted to call for a moral principle or rule that allows for a decision between the two. But where could one possibly find such a principle or rule. We cannot seek it outside the situation lest we abandon the primacy of the ethical call that arises immediately from our facing the needy other. But we cannot find it in the situation itself either, because the situation has turned out to be conflictuous.

Alternatively, one could address this objection by questioning the correctness of the objection itself. Is the interpretation of the situation at hand in terms of an irreducible *conflict* of duties correct? There is a tendency in contemporary medical ethics to analyze cases in terms of incompatible needs, conflicting values, opposing rights and duties, which then must be balanced to reach a decision. For example, the issue may be summarized as the need for treatment of the AIDS patient *versus* the protection of the care providers' health; the needs of the infertile couple *versus* the needs of the patient with sclerotic coronary arteries; the religious freedom of parents to refuse a blood transfusion *versus* the value of the life of the Jehovah Witnesses' minor child; the right to refuse any kind of experimental therapies *versus* the value of gaining new scientific knowledge, etc. However, would it not be possible by means of a more in-depth interpretation of the complete situation to move beyond the first impression of conflict? Without a dilemma, that is, a situation in which two (or more) assumptions regarding the preferable course of action can be discerned, there would neither be a moral problem nor an ethical analysis. But the immediate translation of such a *prima facie* dilemma in terms of an irreducible, tragic conflict seems unwarranted. Indeed, the inn keeper knew he could not afford to care for the victim without some financial assistance. But he managed the money so generously provided by the Samaritan very prudently and frugally. He resisted the temptation of cost shifting, notwithstanding his dire financial needs, and did not allot himself a handsome profit.

Likewise, contemporary care providers, be they individual clinicians or health insurance companies, are called to meet the needs of sick patients, all sick patients. It is only because we first break up the caring

community into a series of individual care providers and the community of those in need into individual patients competing for the same resources, it is only because we first make these artificial distinctions that we set ourselves up for all of these seemingly irreducible and tragic conflicts. In fact, care givers and those in need of care are all members of the same human community and the various smaller local and more immediate communities.

That is not to say that all moral dilemmas will evaporate by adopting an interpretive horizon that is communitarian rather than individualistic. As mentioned, it is only because of the different and *prima facie* competing duties we are called to fulfill, that ethical dilemmas arise, that ethical reflection is stimulated, and theories of ethics are constructed. It is probably part of the unavoidable human condition inevitably to be faced with such dilemmas. But our chance of reaching a fair resolution to such dilemmas may well increase considerably if all of us – but *a fortiori* care providers – can meet our fellow human beings in need as moral neighbors rather than as moral strangers.

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Notes

1. Obviously, Levinas' heteronomy stands opposite from libertarian autonomy, not Kant's version of autonomy. If we were to merge Kant's basic formulation of the categorical imperative as the law that sets itself, with the second formulation of the same imperative that each person always must be regarded as a goal in itself, and never as a mere means toward some other goal, a rather Levinassian imperative would emerge: The Law that each and every individual person represents (Kant, 1974).
2. Phillips has indeed confirmed (in an oral communication in June 1994 – *JW*) that he did not want to suggest another moral response to the sacked traveller is reasonably feasible.
3. Notwithstanding its liberal image, the Dutch Penal Code still contains articles prohibiting public begging (art. 432–434).
4. Some may object that I have yet to prove in theoretical, i.e. generic-rational terms, that there is an obligation to assist one's fellow human beings who are in serious need. I grant that my answer to the second objection ("what if the Levite recognized the needs of the sacked traveler, but

did not experience a call to assist him”) is nothing more than an admission of, and even plea for, an element of situational subjectiveness. But then, no theory of ethics can provide a final answer to the question why a particular event ought (not) to happen. There is a circular element in all of ethical theorizing, as Aristotle already conceded in his *Nicomachean Ethics* (1094b–1095a). All ethical theorizing, even at such a basic level as analogous reasoning, rests on an initial, *a priori* recognition of certain events as clearly moral or immoral.

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