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INTRODUCTION: BIOETHICS AND ASIAN CULTURE – A QUEST FOR MORAL DIVERSITY

This volume, *Bioethics: Asian Perspectives*, has been compiled and edited within the context of an intensified debate on universal ethics and global bioethics. It seems to me that after the Cold War and in the process of globalization, some have been anxious to unify not only the actions but also the beliefs and value systems in biomedical and other fields under the rubric of global bioethics or universal ethics. The desire to solve global problems or issues by coordinated efforts made by all peoples and all countries in the world is understandable. However, these coordinated efforts have to be and only can be achieved by consensus between them after patient and informative dialogue, consultation and negotiation with mutual respect and mutual understanding. The final answer cannot be deduced from an overarching universal ethics or global bioethics invented by some genius philosopher or leading figure, and any such inventor may not impose his solution on other people. Nothing could prevent this kind of imposition from leading to the kind of ethical imperialism that some bioethicists in developing countries understandably worry about.

I believe there are some values shared by different moral communities or different cultures which might constitute some common ground for resolving global issues. However, this does not mean that these values constitute an overarching universal ethics or global bioethics, because these shared values can and must be interpreted and applied in different ways in different cultural contexts. For example, Confucian or Buddhist cultures may share with Judeo-Christian cultures such values or rules as “Do not kill the innocent”, “Do not steal” etc. However, for Confucians, the rule “Do not kill the innocent” does not include not killing fetuses, whereas for Buddhists it includes not killing all forms of animals. For Confucians, the rule “Do not steal” does not include stealing books: Stealing books is not stealing. Obviously not all cultures share this same interpretation of “do not steal”. Although these shared values are useful in practice, their content is too poor to constitute an overarching universal ethics or global bioethics.

It turns out that these shared values or rules are only minimum denominators, as A. Campbell pointed out in his 1998 presentation “Global Bioethics - Dream or Nightmare?” at the 4th World Congress of Bioethics in Tokyo. Various communities

may share moral concepts, just as Newtonian and Einsteinian physics share concepts like “mass”, “space” and “time”, but understand those concepts to mean different (and sometimes incompatible) things.

The contributors to this volume are all non-Westerners, but many of them have been trained in the West or are familiar with Western philosophy and/or bioethics. In the process of compiling and editing the volume I have been deeply impressed by how diverse the views of these contributors are on bioethical issues even within an Asian cultural context. I believe that the diversity or pluralism of bioethical views will promote the growth of bioethics just as the late philosopher of science, Paul Feyerabend, argued that the proliferation of scientific theories promotes the growth of knowledge.

I. THE FOUNDATION OF BIOETHICS IN ASIA

The papers in Part I show that the foundation of bioethics in Asia is quite distinct from that in the West, and that it also differs between Asian cultures and subcultures. The intellectual foundation of bioethics is entrenched in or closely related to particular cultures. In Asia there are Confucian, Taoist, Buddhist, Hindu, Islamic, Christian and many native cultures. For example, in East Asia Confucianism is still very influential, and some bioethicists are trying to develop a Confucian approach to bioethics or to integrate this approach with approaches other than Western liberalism. In her paper “Confucian and Western Notions of Human Need and Agency: Bio-medical Ethics in the Twenty-First Century,” Julia Tao-Lai Po-Hwa points out that health care and biomedical ethics in the twentieth century have been grounded on two broad principles, the principle of right and the principle of need. These principles provide the ethical framework for shaping our public decision-making and social legislation, particularly in welfare choices and health care policies. However, there have been serious doubts raised in recent years about the adequacy of the language of rights, particularly in bioethical and health care matters. Feminist, communitarian and other philosophers criticize the rights language as indifferent to people’s actual psychological and material capacities to exercise rights; unconcerned with responsibilities; setting claimants against each other and against larger collectives; and as being a formalistic and acontextual approach to freedom and social justice. Overemphasis on individual rights and liberty as the primary principles in health care policy and biomedical decisions can easily lead to an unlimited demand on government provisions to satisfy maximum individual preferences. This in turn can lead to the disappearance of public health as a common good in society. After she compares individualistic and relational conceptions of human need and agency, Tao argues that a relational conception or paradigm, which constitutes the basic tenet of feminist care ethics and Confucian moral philosophy, is better able to allow us to talk about doctor-patient/family relationships and to bring patients’ family relations into the orbit of care and concern. She argues that an awareness of these bonds between people leads to the further recognition of our mutual responsibility for one another and to insights into the necessity of sympathy and care to provide a more adequate response to human needs in bio-medical decisions.
This approach has to focus on the concept of personhood in seeking an alternative intellectual foundation for bioethics in Asia. Edwin Hui, in “Personhood and Bioethics: A Chinese Perspective,” elaborates a Confucian concept of personhood. He criticizes the “substantialist” concept of personhood in the Western tradition, in which “person” is defined as a rational individual substance, and points out the inadequacy of defining human personhood in terms of higher-brain functions or similar psychological criteria in modern bioethical discourse in the West. In contrast with this, a Confucian account of personhood emphasizes both the “substance” dimension as well as the importance of “relationality” in the constitution of personhood. The human person is a psychosomatic unity and a social/relational being, a “being” always in the process of “becoming” that is carried out in and through the social context for the purpose of fulfilling social responsibility rather than self-actualization per se. He analyzes the fundamental concept of ren, which not only refers to an inner character/spiritual condition/virtue, or an aspect of outward action/conduct, but also as a dynamic process of “person making,” involving mutual incorporation between the self and the other. From this perspective it follows that different views will be taken on bioethical issues such as the beginning of life, death and dying, informed consent etc.

In his paper “Foundation of Asian Bioethics,” Hyakudai Sakamoto discusses the shape of an “Asian bioethics”. He argues that bioethics in the Asian region might be fundamentally different from the Western pattern in its cultural, ethnological and also philosophical basis, reflecting the present day multi-cultural post-modernism. He challenges the universality of human rights for two reasons. First, he argues that human rights have neither a theoretical background nor a practical ground in Asia. He claims that the new Asian bioethics should stand on the new philosophy concerning the relation between Nature and the human being. This is a new humanism without human-centricism, a new concept of human rights and Asian ethos.

Po-Keung Ip, in his paper “Confucian Personhood and Bioethics”, examines the bioethical ramifications of the Confucian non-rights-based notion of personhood in areas including abortion, treatment of newborns and doctor-patient relationships. The Confucian notion is basically a non-rights-based notion of personhood, as well as a humanistic and collectivistic moral enterprise. Since the family sits at its core, it may aptly be deemed familial collectivism. In traditional China, central to the set of Confucian norms is filial piety. As a cardinal principle, it dictates the desirable and proper human relationships within the family and beyond. As a result of the paramount importance given to filial piety, it dominates and defines all other salient human relationships. To the extent that filial piety centrally endorses hierarchical human relationships, it runs contrary to the value of equality of persons that sits at the heart of the rights-based concept of a person. To the extent that Confucian familial collectivism is inhibitory to rights and equality, it is conceptually incompatible with the concept of a rights-based personhood. Ip also explores the implications of the concept of personhood for bioethical issues such as abortion, euthanasia, organ transplant, human experimentation, and artificial human procreation. In his conclusion he points out that the chief flaw of the Confucian non-rights-based personhood is that it fails to take due consideration of the rationality of the rights arguments as well as the rights of the agents involved in decision-making.
In “Rights or Virtues? Towards a Reconstructionist Confucian Bioethics”, Ruiping Fan addresses the arguments offered by Tao, Hui, Sakamoto and Ip. From Fan’s view, the two sets of essays in this section, Tao’s, Hui’s, and Sakamoto’s on the one hand, and Ip’s on the other, epitomize two different approaches to the nature of Asian bioethical explorations for the foundation of an Asian bioethics. In the approach of Tao, Hui and Sakamoto, the foundation must be established based on Asian cultures, religions, and moralities, especially Confucianism, thus providing a bioethical account more adequate in the Asian context than the account offered by modern Western individualist morality. In Ip’s approach, however, a rights-oriented bioethics is a must to shape the core of an Asian bioethics, because, as he sees it, Asian moralities in general and Confucianism in particular fail to take individual rights seriously and are thereby fundamentally defective. Fan argues that a strict rights-based account of bioethics is problematic, and suggests that virtue-based Confucianism has many strengths to recommend it as a possible basis of bioethics. In his ‘Reconstructionist’ bioethics, he points out the very different moral perspectives underlying Confucianism and the liberal morality of the West, and argues that attempts to reduce Confucian ideals to familiar Western concepts is not possible without a loss of meaning. According to Fan, “Reconstructionist Confucianism holds that it provides a more ample account of human flourishing and morality than that offered by other accounts, individualist liberal accounts included” (p. 72).

2. BIOETHICS IN ASIAN CULTURE: GLOBAL OR LOCAL?

Part II of this volume focuses on the impact of culture on the way in which bioethical issues are formulated and addressed, and in perusing this section, readers cannot help asking the question: is bioethics global or local? It seems to me that in spite of there being shared values between different moral communities and different cultures, bioethics as well as ethics in general seems to be grounded locally. However, the contributors of papers in this part of the volume disagree on this topic: The diversity of bioethical views or the debate between them is natural in this rapidly developing and changing continent which is undergoing a paradigm-shift.

Angeles T. Alora, in her paper “Philippine Culture and Bioethics,” clearly describes the impact of culture on bioethics in the Philippines and the interaction between culture and bioethics. She points out that what is bioethically correct may not be culturally acceptable and similarly what is culturally normative may not be bioethically correct. We must consider this interplay and determine what is both culturally and bioethically acceptable. The characteristics of Filipino culture include society or family orientation, a search for harmony, person orientation, and multidimensional health care. For Filipinos the family is considered “the highest value in Filipino culture” and the “core of all social, cultural and economic activity”, and it provides financial and psychological support, emotional security, and a feeling of belonging—an environment where a Filipino can be himself. The Filipino views his person holistically, and rarely isolates actions from person, parts (whether these be organ/cell/molecule/gene) from whole, mental from physical, disease from diseases. All these affect how such bioethical issues as autonomy, futile treatment and care for the terminally ill, health professional relationships, health policy etc. are
addressed. She claims to develop from the different cultures “a basic fundamental moral attitude, a fundamental consensus of binding values, standards and personal moral attitudes, an irrevocable ethics, a universal ethic.” However, when in a particular situation bioethical principles come in conflict with the cultural givens, we should learn to use prudence and patience to discern what is truly ethically correct and culturally acceptable in the Philippines.

V. Manickavel examines the encounters of bioethics with different cultures in different countries from another perspective in his paper “Living in Separate and Unequal Worlds: A Study in the Application of Bioethics”. He argues that bioethics is like a train that doesn’t stop at stations that may be too small or where people don’t want to get on. He takes an example of American physicians using Quinacrine for sterilization of Indian women (with local government approval), despite the fact that neither the United States nor other Northern countries had approved this particular drug study for this purpose in their own countries. This example illustrates the insensitivity of the host Southern country and the double standard adopted by the Northern sponsoring countries. In conclusion he argues that ethics is not a luxury that only rich people or nations can afford. Instead, the ethical principles based on transcendent values always help humanity in providing justice to individuals, families, communities or nations.

Another interesting aspect is to look at the impact of Asian culture upon the relationship between physician and patient. In many cases this relationship is a triple relationship between physician, patient and her/his family. Because bioethics in Asia is mainly beneficence-oriented, the principles of autonomy, informed consent, truth-telling, etc., cannot be implemented in a Western way, and have to accommodate themselves to an Asian context. Un-Jong Pak, in her paper, “Medical Ethics and Communicative Ethics” addresses the limitations in applying the principle-based argumentation in the era of modern science and technology, and argues for a communicative ethics that is based on feminist care ethics integrating Oriental morality. She argues that the application of modern biomedical technology brings about possible harms to human beings, and that there is a need to reconstruct the bioethics that is based on mutual respect and co-responsibility between equal moral subjects. Modern biomedical science has changed the context of medical treatment, so that in the decision making process, the patient relies more on communication with family or others than with the physician. Eventually, most decisions are made by the patient her/himself with the support of other family members. The patient must seriously consider the non-medical factors such as the extent of financial burden on him/herself and others, quality of life, or family impact rather than medical concerns such as the effectiveness of medical care, risk of operation, etc. What matters in bioethical issues is to capture the dilemma in the situation and to suggest a solution. There lies the reason why we can not establish a satisfactory answer merely by appealing to theory or general principles in resolving bioethical issues. In this regard, the development of the new communicative model has emerged as one of the important subjects of bioethics. She argues that communication based upon mutual understanding and agreement is the essence of ethics, and the patient’s right to autonomy or informed consent is deemed to be secondary. Pak claims to reconstruct a new medical ethics through the reinterpretation of traditional Asian values and the perception of the community. Her
endeavor as a Korean feminist philosopher to develop a “Buddhist model of the caring ethics” and such traditional Oriental ideas as the “relational ontology” is an example of such a reconstruction.

Now let us turn to other parts of Asia. Leonardo D. De Castro & Allen Andrew A. Alvarez in their paper “Sakit and Karamdamam: Towards Authenticity in Filipino Concepts of Disease and Illness” highlight the value of authenticity in responding to disease and illness. For them authenticity must be added to utilitarian and pragmatic considerations as a criterion of validity of healing responses to disease and illness, and must be achieved by ensuring the alignment of treatments and remedies with the social and cultural dimensions of disease and illness concepts. The point is that diseases and illnesses are not merely biophysical phenomena, but instead form part of a matrix of values, traditions and beliefs that define a cultural identity. They begin by analyzing the nuances in meaning of two words, “sakit” and “karamdamam,” which have noteworthy implications for the understanding of concepts of health and illness in the context of Filipino society and culture. Various theories of illness causation remind us of a need to situate the search for health remedies in the context of cultures, traditions and ideologies. In conclusion, they argue for cultural integrity and authenticity in medicine. From their arguments it may follow that there is no essential bioethics or essential medicine, as pointed out by Arthur Kleinman.

3. LIFE AND DEATH, EUTHANASIA AND END-OF-LIFE CARE

Life and death are major concerns of all peoples, and are also major issues in bioethics. Perhaps the most voluminous literature in bioethics is devoted to these two issues. And the inquiry into life and death issues highlights the cultural influence on bioethics. The advance of new genetics, cloning, reproductive technology, life-sustaining and other relevant technologies enable human beings to “play God”, i.e., take over the arrangement of life, aging, disease and death from Nature or God. That makes the life and death issues more complicated. Phee Seng Kang, in his paper, “Cloning Humans? Some Moral Considerations” discusses moral issues involved in the means as well as the ends of human cloning, and explores the relationship between genetic equivalence and identity equivalence, the implication of inheriting another person’s genes, the effect of asexual reproduction on family structure and relationships, the risks involved in human cloning, and the question of cloning and rights. The extreme individualism and liberalism underlying the acceptance of a woman’s right to use her dead husband’s frozen sperm without his consent and become pregnant more than three years after his death are not ideas to which an Oriental society will easily subscribe. He suggests that the most urgent task is not to perfect the technique for human cloning so that infertile couples can have another option to procreate, much less to establish a possible scenario that would permit human cloning. He criticizes the U.S. National Bioethics Advisory Commission’s recommendation to ban human cloning on the grounds of safety alone, arguing that issues on life and morality have been set aside. A pressing concern we face today is that the pace of our reflections in the humanities has not kept up with the fast-moving biotechnology and genetic technology. To allow human cloning too hastily when the moral, social, legal and religious issues are still
unresolved is also irresponsible. His conclusion is that human cloning may well turn out to be one of the things “that we can do that ought not to be done.”

Brain death is another case that highlights the conflict between modern biomedical technology and traditional culture. After a long debate, the Japanese eventually reached a compromise: the Japanese Parliament passed a law in 1998 to accept the definition of brain death in coexistence with the traditional cardiopulmonary paradigm of death, and left the room to choose to the people. But the law does not end the debate. Kazuo Takeuchi in his paper “Brain Death Criteria in Japan” describes the debate on the concept of brain death in Japan and points out that the situation there is a definite example of conflict between medical advances and the traditional culture of Japan. As for brain death, we still have two ways of thought represented by the expressions: “a dead brain in a living body” or “corpses with a good volume pulse”.

However, in mainland China the concept of brain death is still not accepted in the law. Ming-Xian Shen in his paper “To Have a Good Birth as well as a Good Death: The Chinese Traditional View of Life and Its Implications” elaborates the Confucian and Taoist metaphysical and moral viewpoint of life and death and its implications for bioethics. He points out that it is relatively easy to suggest a good birth and a meaningful life, but to suggest a good, meaningful death is something quite different, because it sees the attitude toward death and the manner of death as the way of being human and the way to ideal life. He argues that there are many reasonable elements in the life-view of traditional China that are consistent with modernity and become important ideological and cultural resources of bioethics. Bioethics in Asia must have its own characteristics and should make a special contribution to global bioethics. In Ping Dong & Xiaoyan Wang’s paper “Life, Death and End-of-Life Care: Taoist Perspective”, it is argued that the Taoist view of life and death provides an intellectual foundation for end-of-life care, and the acceptance of a Taoist perspective on life and death will help dying people to reach the end of life’s journey and satisfy an expectation of, and pursuit for, a good end with peace and dignity. A Taoist conception on life and death widens people’s vision and helps them to merge their spirit with the great tao of a boundless universe.

Euthanasia is another major topic in Asian bioethics, and even within the same cultural context there are conflicting views. Da-Pu Shi & Lin Yu in their paper “Euthanasia Should be Legalized in China: Personal Perspective” report in detail on cases involving euthanasia and the findings of surveys conducted in mainland China. They argue for the legalization of euthanasia in mainland China and try to refute the arguments against it despite the fact that active euthanasia is illegal according to the current interpretation of Chinese Criminal Law.

4. BIOETHICS, POLICY AND LAW IN ASIA

Bioethics is the foundation of formulating, implementing and assessing policy and law involving health care. It is much less adequate or appropriate to address the policy dimension of bioethics without consideration of the socio-cultural context in which the policy is formulated and implemented. With globalization, isolationism is no longer plausible or tenable, but the critique of the policy or law in one culture
from the viewpoint of another culture without consideration of the context may be inappropriate and counter-productive. The typical example concerns population policy in developing countries. Re-Feng Tang, in her paper, “Chinese Population Policy: Good Choice and Right Choice”, argues that proper thinking regarding population policy should concentrate on goodness instead of rightness. She points out that Chinese thought on population policy is concentrates on goodness, while Western thought concentrates on rightness. These two ways of thinking can be ascribed to two kinds of ethics, that is, good ethics and right ethics. She argues that good ethics is more mature than right ethics, and explores the implications of good ethics on population policy with challenges to the rights talk in population policy.

China’s Law on Maternal and Infant Health Care has been a controversial issue in the international genetic community. Apart from there being some flaws in this law, cultural differences between geneticists, bioethicists and lawyers from different countries cannot be ignored. Even the language of “eugenics” is so ambiguous that it bears divergent interpretations. Ren-Zong Qiu, in his paper, “Does Eugenics Exist in China? Ethical Issues in the Law on Maternal and Infant Health Care” provides some background information about the law, describes two approaches in drafting the law, and discusses ethical issues in formulating and implementing the law.

HIV/AIDS is one of the most disastrous challenges facing Asia in the twenty-first century. However, the preventive strategy in Asian countries is gravely inadequate. Yan-Guang Wang, in her paper, “AIDS, Policy and Bioethics: A New Bioethical Framework for China’s HIV/AIDS Prevention” attempts to formulate a bioethical framework to deal with moral and policy issues in HIV prevention. She argues that basic principles such as nonmalficence, beneficence, respect for autonomy, and justice are not adequate for HIV/AIDS prevention, and suggests an improved bioethical framework which consists of the principles of tolerance, beneficence, autonomy and care. Within this framework, the principles of tolerance and care should play a central role. The principle of tolerance is located in the first order of this bioethical framework because the basic bioethical framework, when applied in the ordinary medical context, is based on a presumption that all patients have equal social and moral status. But when using these principles in an HIV epidemic, we find that some special social groups, such as AIDS patients, HIV+ patients, drug users, prostitutes and homosexuals are marginalized, often stigmatized and discriminated against. To view them as having equal social and moral status is very difficult for the public. Wang argues for the principle of care as improving the rational stance of the principles of nonmalficence, beneficence and respect for autonomy and as helping to solve issues within the basic bioethical framework, especially regarding how to solve special issues of the HIV/AIDS-related population.

Health care reform is another challenge facing Asia in the twenty-first century, both in developing regions and developed regions. This is true even in Hong Kong, where health care has been successfully provided, costing only 3% of GDP and providing more than 90% of the entire hospitalization services. Life expectancy is even higher than that in USA. Ho-Mun Chan, in his paper, “Justice is to be Financed Before it is to be Done: The Social Justice of the Hong Kong Public Health Care Reform”, gives an overview of the health care financing system in Hong Kong, and explicates the reasons for reforming the existing financing system. He argues that
the reform should be guided by the principle of social justice and that a just health care system should guarantee a decent minimal level of service for all as determined by an open and accountable mechanism of rationing. In the conclusion he evaluates the possible options for reforming the health care financing system in Hong Kong, and argues that no drastic change is needed provided that a proper rationing mechanism is in place.

In closing, I would like to express my sincere gratitude to all contributors who made such painstaking effort with this volume, and to Professor H. Tristram Engelhardt, Jr. and Dr. Ruiping Fan in particular: without the former’s encouragement and the latter’s assistance, this volume would never have appeared.

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CHAPTER 2
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CONFUCIAN AND WESTERN NOTIONS OF HUMAN NEED AND AGENCY:
HEALTH CARE AND BIOMEDICAL ETHICS IN THE TWENTY-FIRST CENTURY

1. HEALTH CARE AND BIOMEDICAL ETHICS IN THE TWENTIETH CENTURY: THE PRIMACY OF RIGHTS

Twentieth century Western liberal democracies have been largely dominated by two broad principles upon which the allocation and distribution of resources, particularly public resources, are based. These are the principle of right and the principle of need (see for example Wiggins, 1998; Doyal & Gough, 1991; Plant, 1990, 1986; Miller, 1976; Rawls, 1972). They provide the ethical framework for determining societal priorities, aiding professional judgment, grounding entitlements and reconciling claims. They also shape our decision-making and social legislation for public intervention, particularly in welfare choices and health care policies (Tao and Drover, 1997).

The principle of right is grounded in the notion of individual freedom. There is a strong tradition in the culture of the West which holds the view that freedom of the individual is the human essence (see for example, Hobbes, 1968; Locke, 1988; Mill, 1991; Patterson, 1991). As the central concept in Western political philosophy, the imperative of freedom is seen as natural and fundamental. It is also considered to be “the basic starting point, not only for understanding human relations and society, but for defining and justifying other concepts, such as justice, obligation, and rights” (Hirschmann, 1996, p. 55). For many of the liberal right theorists, the importance of equality is that we are equally free, and rights exist to protect spheres of action from outside interference. John Locke defends this popular assumption in Western moral and political philosophy in this way: “All men are naturally in ... a state of perfect freedom to order their actions, and dispose of their possessions and persons, as they think fit, within the bounds of the law of nature, without asking leave, or depending upon the will of any other man” (1988, p. 269). According to Locke, “The state of nature has a law of nature to govern it, which obliges everyone, and reason, which is the law, teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions...” (1988, p. 271). Thus, “The natural liberty of man is to be free from any superior power on earth, and not to be under the will or legislative authority of man, but to have only the law of nature for his rule” (p. 283).

This natural liberty is not only a given of the state of nature; it is essential to humanity, a natural right. Since the time of Locke, it is widely accepted in Western liberal democracies that the state’s responsibilities should be limited by individual rights based upon this naturalistic presumption of individual freedom. It is further recognized that the rights give rise to enforceable claims between citizens as well as between citizens and the state. More recently, the notion of rights has been expanded to include negative as well as positive rights (Berlin, 1971). The former defines freedom in terms of an absence of intentional interference by others. The latter defends a notion of freedom which also includes the capacity to undertake certain actions, and hence must include a number of social or welfare rights. In order to provide adequate security for individuals, many fundamental rights are embodied in laws and in international conventions. A doctrine of right has also been an important driving force behind public policy advocacy in the second half of the twentieth century. One of its major consequences is the establishment of a right to health care in modern societies, as well as the important recognition of a number of related individual rights in major health care and biomedical decisions including abortion and procreative liberty, euthanasia, and refusal of treatment (see, for example, Miller, 1981; Buchanan, 1984; Daniels, 2001; Thomson, 2001).

2. THE CRITIQUE OF RIGHTS

A principle of right is no doubt highly important to protect individuals from being swamped by the demands of the many. But there have also been serious doubts raised in recent years about the adequacy of the language of rights and about the legal system in which rights are established for reconciling claims, grounding entitlements, and resolving conflicts, particularly in bioethical and health care matters. Many of those who participate in the critique of rights, in particular some feminist philosophers, express concern about how an overemphasis on rights could obscure other important moral concerns such as power inequities, justice for particular social groups, and real divergence of cultural, religious and moral perspectives (see for example, Gilligan, 1982; Noddings, 1984; Young, 1990, Held, 1993; Tronto, 1999). In their view, “rights” are indifferent to people’s actual psychological and material capacities to exercise rights, unconcerned with responsibilities except those narrowly connected with rights, and aggressively individualist, setting claimants against each other and against larger collectives.

Specifically, the concern is that the language of rights cannot provide the resources for building mutual concern and cooperative relationships between opposing parties caught in a conflict situation of competing interests. Instead of promoting discourses that focus on the negotiation of differences and the harmonization of interests, the language of rights tends to promote discourses that encourage “the contestation of rights.” A classic illustration is the case of abortion described by Sarah Ruddick (1998, pp. 313-314). Her analysis shows that often in these cases, fetus’ rights, first to life, and then to a minimally safe “maternal environment”, are easily opposed to a pregnant woman’s rights to pursue her own life plan. Moreover the father of the fetus, its grandparents and the state may also contest a pregnant woman’s right to terminate or to continue her pregnancy. What becomes clear is the fact that the language of rights, and the legal system on which it is based, tend often to exaggerate rather than reduce the division between the
different actors; to sabotage rather than support the creation of more inclusive and cooperative family relationships; and to deny rather than to foster the unique connection of a pregnant woman and her infant to whom she may give birth. In these and many other instances, rights could easily be turned into instruments of oppression, the voice of power and domination, instead of being instruments for the protection of the powerless.

Another major failure of the rights discourse, according to critics, is its formalistic and acontextual approach to freedom and social justice (see, for example, Hirschmann, 1995). In particular, they question the usefulness of an abstract universal principle of rights in meeting the needs of those who are confronted with concrete major life crises. Carol Gilligan (1982), for example, in her study of the right to abortion, reminds us that women referred little to their rights, but more to their relationships in their moral deliberation. It is argued that in these situations of significant life changes, the primary imperative is to identify harm, suffering and need, and to respond in effective and responsible ways to all those likely to be affected by the pregnancy. This would require a mode of understanding and empathy which is sensitive to the particularity of relationships and which a universalist notion of rights grounded in abstract freedom is unable to recognize. In similar ways, Sarah Ruddick’s study of pregnant drug users (1998) shows how often the latter do not so much need rights as help. These include help to protect one’s own health and the health of the fetus; help to learn the new role of a mother, and help to nurture the developing relationship.

A third criticism of the primacy of rights is raised by communitarian liberals such as Charles Taylor (1992) who question the priority of the individual and his or her rights over society. According to Taylor’s arguments, asserting a right is more than issuing an injunction. There is always the presupposition that it has an essential conceptual background in some notion of the moral worth of certain properties or capacities, without which it would not make sense. Take the right to life as an example. Taylor argues that the affirmation of the right to life could never have been understood as a right just to biological non-death in a coma. To be alive now in the meaning of the act is to be dealing with capacities which do not simply belong to us in virtue of being alive. These are capacities which can only develop in society and in society of a certain kind. Ironically, however, these conceptual backgrounds within which one makes sense of, and gives meaning to rights, including the right to life itself is, according to Taylor, becoming increasingly lost to us because of the way the priority of individual rights and liberty are fracturing our moral world and undermining robust communities. A similar point is made by Tris Englehardt (2002, p. 32) who observes that because of the breakdown of communities, many of us will lack a narrative integration around a deep sense of self or the meaning of reality. The implication is that we will be increasingly living a life which has the appearance of “an affirmative story of self-liberation,” but “which can in the end have no enduring content.”

An over-emphasis on concerns with individual rights and liberty not only significantly affects what we believe about the relationship between the self and others, especially the degree to which one sees oneself as separate from or as connected to others. If taken as the primary consideration in health care policy and biomedical decisions, it can also easily lead either to an unlimited demand on government provisions to satisfy maximum individual preferences, resulting in
escalating costs and questionable sustainability of the entire system, or to the gradual erosion of the collective provision of public health care because of increasing demand for freedom of choice and individual responsibility for health care through the market and private insurance. The consequence of either development will be an increasingly privatized health care system as has been happening in many quarters of the world in the last century. Either way can bring about the gradual disappearance of public health as a common good in our society, which will ironically become even more atomized with the disappearance of more and more of its common goods.

2.1. The Appeal to Basic Human Need

"Need" is the other important principle which is at the heart of welfare state provision in many Western societies in the last century. An appeal to need is common in professional practice, social policy and development planning to address issues of claim, entitlement and obligation. There have been many attempts in the literature to develop a thin notion of need which is abstract, objective and universal in order to provide a moral foundation for the non-market allocation of resources, since a thick notion is likely to be contested. One prevalent approach is to identify certain essential human capacities for grounding a general theory of human need. This has led to a widely embraced view of human agency and personhood in the West, which basically defines the essence of human agency or personhood in terms of the capacities to act rationally and to make independent and voluntary choices (see for example Buchanan, 2001, p. 137; Beauchamp, 1998). The general tenet of this view is that an entity is conceived as a person or a human if and only if it possesses certain properties similar to the following: (1) self-consciousness of oneself as existing over time; (2) ability to appreciate reasons for or against acting; and (3) ability to engage in purposive sequences of actions. Such an understanding of the essential properties of human agency or personhood is highly reminiscent of John Locke’s classical analysis of a person, whom he defines as a “thinking intelligent being, that has reason and reflection, and can consider itself as itself, the same thinking thing in different times and places” (1975, Il.xxvii.6). These are the more commonly accepted cognitive capacities in the philosophical literature as to what at least are some of the necessary conditions of personhood. They are conceived to be the properties which distinguish the human from the non-human animal. They are in this sense universal, cutting across cultures.

There are several objections to this view of human agency or personhood. One of the concerns is that “the degrees of personhood invited by these criteria will allow some non-human animals to be more independent and positioned at a higher level of personhood than some humans, and may even exclude some wanted humans, say some middle-stage Alzheimer’s patients, from our consideration” (Beauchamp, 1998). Such a view is considered to be unacceptable not only because it may accord a higher degree of personhood to non-human animals than some demented or severely impaired patients. It raises the objection that since these are cognitive properties which have no moral significance, it is inappropriate to delineate descriptive properties of individuals in order to draw conclusions about moral standing. The fact that some being is rational and acts freely and purposively is not sufficient for establishing any form of moral standing because capacities of rationality, self-consciousness, and the like have no intrinsic connection to moral