

HUMAN RIGHTS AND “AGEISM”: DIGNITY AT STAKE

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I would like to explain three theses about human rights and dignity for the frail old persons:

1st. Reconsidering human rights from “ageism”: ageism may become the newest threat to human rights.

1.1. Definition

Human rights are primary goods, in Kantian words, “transcendental” goods, that is, the condition of possibility for choosing other goods. Rights are the minimum goods that any person should be guaranteed in order to enjoy a decent life from which this quality of life can be chosen.

So let’s make the difference between quality and dignity of life: dignity is essential for choosing quality; it is the minimum to be able to choose from self determination. Thereby dignity is the *conditio sine qua non* for making decisions, while quality depends on subjective, personal preferences. Good life is a purpose, a personal and subjective goal, but human rights are the conditions to look for it. A fair life must make the search for the good life possible.

For instance, people have the right to take decisions, among these, when to die. This is a matter of dignity. Some people are for euthanasia and others are against euthanasia, this will depend on the meaning of their quality of life. Both options exist in a morally plural society, and both need the right to decide. But an anti-euthanasia law doesn’t respect the right to take decisions of one of these options, so it isn’t respectful regarding the dignity and quality of life of a part of this plural society.

Civic ethics, minimums based on human rights, which is the content of justice, must be fostered. We need an ethics for global society, for a shared world with morally plural societies that don’t share the concept of good and the meaning of quality of life.

1.2. A brief History of human rights

Human right is an ethical expression that was born in the XVII century, in the context of Modern Philosophy. Thus human rights were limits that had to be respected by Governments or by other people.

Kant, the author who made the concept of autonomy fashionable, reminds us that everything has its price, while people have their dignity. And this dignity causes in us the moral feeling of respect. In German, *Achtung* means both attention and respect, from the Latin *respicere*, that means watchful look. To respect our frail old people means to pay attention to their needs. Kant reminds us that dignity should be something sacred: humanity is worthy of respect, because humanity is an End in itself and implies rational competence, self-determination and responsibility.

Kant grounded dignity on the autonomy of person. Autonomy is self-determination of the moral agent, an independent and rational being. So the condition for being autonomous is having the ability to grasp reality and information in order to be able to take decisions, with the absence of obstacles or pressures (internal or external) and in coherence with their own scale of values (Beauchamps & Childress, 1999).

1.3. Insufficiency of this approach

However, autonomy is hindered in elder persons. Precisely the people deserving care, like frail old people, have dignity but not autonomy, maybe they will not have it any more.

We need to reconsider the ground of human rights, principally for three reasons:

a) *We are interdependent beings, not self made ones.*

Human beings are social beings always, and we always need to be recognized as a person, with degrees of autonomy and freedom and degrees of vulnerability and fragility.

Actually today Modern Philosophy has been criticized because of its *individualistic paradigm*. Modern Philosophers always talk about an independent and rational human being, but the human being is an inter/dependent rational animal (MacIntyre, 1999). We need each other, not only in childhood or in elder age: we always need the interactivity to be rational, to become a person.

The only method we have to discover truth or justice is dialogue and deliberation. Definitively, self was not in the beginning, “in the beginning was the verb”, the word, in

the beginning was not 'me' but 'us', not the individualism but the relationship and the cooperation.

b) Elder people with dementia, Alzheimer illness or people with serious intellectual disabilities are not autonomous but not for that they are lacked of dignity and human rights.

The ground of human rights is autonomy and dignity; but autonomy is always a degree on a continuum, a process during which we can become more or less autonomous. People lose their autonomy at the end of their lives; most of them will become dependent. However vulnerability and fragility are not shamed conditions but human conditions. Therefore we can talk about the right to be cared for.

Elder are not so useful, elder are not so rational, not so independent; but they are always persons, worthy of respect because they have dignity.

In Kantian words: "Act in such a way that you treat humanity, whether in your own person or in the person of another, always at the same time as an end and never simply as a means." (G 4: 429; 4: 436).

c) Some criticisms against the universalism of human rights: human rights are a cultural product, a convention established by the winning countries in the Second World War (Declaration in 1948).

Critics say that human rights are not universal; they are only useful fictions for our interest in a specific context. So we can say: "Tell me what your problem is, and I shall tell you which right you could need, which right you could demand".

For example, in the XVII century political and economical rights were demanded, such as, for instance, the right to private property. Later social and cultural rights were demanded, such as, for instance, the right for health. Today we are talking about the right to be cared for.

But we are defending that human rights are the content of justice; they cannot be only conventions out of random or cultural, economical or political interests. They should be defended as universal exigencies to enable us to talk about justice and for rights to be taken seriously. And justice depends on our management.

2nd. Two different senses of dignity: lax sense and strict sense

Bioethics has put too much stress on fostering and respecting autonomy, but it has not always outlined the kind of dignity that should be recognized for a person who is losing autonomy, like in the case of the elder.

We are all educated to become autonomous, but not to accept our dependence, or for treating a dependent person. Furthermore, the traditional ways of dealing with elder people can become obsolete and ethically reproachable because they are based on charity, beneficence, goodwill or paternalism.

We are suggesting that the concepts of dignity and human rights should be reconsidered in order to serve as the underpinning of respect for people who are not autonomous in a great degree.

Thus, we suggest distinguishing between dignity in *lax sense* and *dignity in strict sense*.

- a) Dignity in *lax sense* is the dignity which everyone has *as a person*, someone that is an End in itself, an absolute worth or value, the source of all other values.
- b) Dignity in *strict sense* is the dignity that *only a moral agent* can have. So this dignity in strict sense would be the kind of dignity that is object of personal conquest, the purpose of the human life searching a personal identity, an *ethos*.

Thus, all the people have dignity, also the most perverse murderer and the anencephalic child; but neither of them have dignity in the strict sense: the former because he has abused his autonomy; the latter because he is unable to exercise his autonomy. But we, the ones who interact with them, gamble with our strict dignity if we, when treating them, forget they are always people, despite the immorality of the former and the disability of the latter.

It's the same case for elder people: the right to be cared for independently of if they were good parents or responsible citizens; independently of if they are more or less autonomous. We are talking about dignity and rights: they are persons and they have always dignity in the lax sense. Most of them have finished their own life project; most of them are at the end of their life and they are progressively losing degrees of autonomy.

3rd. Human rights: a matter of justice and normative solidarity

3.1. The veil of ignorance of J. Rawls

The way a society treats its elder members says a lot of about the level of justice and solidarity in this society. J. Rawls in his work *A Theory of Justice* (1971) exposed the hypothesis of the veil of ignorance: if everybody is unaware of their biological-social lottery, they would choose to live in a fair society rather than a random society. In the former, each member is born equal in liberty, and the most fortunate ones in that lottery have to help to minimize the disadvantages of the less fortunate ones.

In contrast, the law of the jungle, an animal law, prevails in a random society. In that society natural selection is the only criteria, a survival instinct that doesn't depend on our liberty. In that society it is stupid to speak about ethics, human rights or dignity: in ethics we talk about what depends on us, about what we owe to each other.

Thus, we can conclude that the incidence of luck in a person is inversely proportional to the level of justice in the human society in which one lives. It is *bad luck* to become ill or disabled, but it is a good luck to live in a fair society that doesn't leave one at his/her own fate. Aging is an unavoidable fact, but it is a good luck to become old living with dignity and quality of life until the end.

3.2. The Communicative Ethics of K.O. Apel and J. Habermas:

Civic ethics talks about two categories: truth and justice.

- a) We understand Truth as the validity of knowledge, a validity based on empirical proof, on the evidence that we have at the moment.
- b) We speak about Justice considered as impartiality and as the consent of the affected parties by the decisions that must be taken.

We cannot take fair decisions without truthful knowledge, for that we need science. From the same dignity for all, civic ethics is the frame in which dialogue takes place, with information, participation and deliberation of involved persons. Civic ethics doesn't talk about quality of life. We must be able to care with justice, the same for everybody (that is dignity), but from different approaches (that is quality).

Therefore we talk about the right to be informed, and that's why the informed consent in health organizations is implemented.

So we must ensure that in hospital or at home elder people eat, drink, bath and take their medication, but impersonalization or homogenization must be avoided: every person has a private unique life and a personal ethics with their particular values.

We have to keep fighting on behalf of frail old persons in order to ensure that they do not lose interaction, participation, autonomy. We must continue to encourage them to fight for life because it is worth it, despite their condition in their last stage. We should fight against *diagnostitis* and determinisms that dictate that if one cannot live a normal life (what is a normal life?) and make a useful function in society, life is no longer worth it. As long as there is someone who makes them feel, in their own way, they are worthy, they will find their quality of life.

Life is the only chance on Earth: we can make it something worthy, which is a matter of justice and solidarity. Nevertheless, we are not talking about solidarity by compassion; we are not thinking in a utilitarian solidarity: “maybe, one day, I could be in these circumstances”. No: it’s a matter of normative solidarity; it is not a contract, it is not a convenience or a selfish interest. It is a matter of rights, justice and respect to humanity wherever and ever.

Who has reasons to live, finds the way. V. Frankl said it better (FRANKL, 1963): whoever finds a ‘why’ can stand any ‘how’. A society that treats frail old people as worthy, is giving them a ‘why’ so all of us (we all are inter/dependent people) can discover how to live better.

As professionals in health organizations, with the leadership of civic ethics and its content, human rights, we ought to make compatible the different ethics: the personal (one’s and the patient’s), the professional and the corporative ones. Dilemmas will surely arise: we have different interests, different cultures, we are different persons with different scale of values. Solutions will be found from the horizon of human rights. It is complex; it is not easy, but it is not impossible. If it is a duty, it must become real, effective.

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