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Are withholding and withdrawing therapy always morally equivalent? A reply to Sulmasy and Sugarman

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Abstract

This paper argues that Sulmasy and Sugarman have not succeeded in showing a moral difference between withholding and withdrawing treatment. In particular, they have misunderstood historical entitlement theory, which does not automatically prefer a first occupant by just acquisition.

Sulmasy and Sugarman have set out to argue that withholding and withdrawing treatment are not always morally equivalent and that a version of historical entitlement theory will give those who are already being treated an entitlement to that treatment which has moral force. They argue for this by presenting a case in which two children, twins, Prima and Secunda, are competitors for a respirator. The doctors toss a coin and allocate the respirator to Prima. We have then to imagine that the parents come along and suggest that the respirator be re-allocated to Secunda because they have a preference for this particular child. Sulmasy and Sugarman argue that it is Prima's prior occupancy of the respirator that requires that no re-allocation be made and they suggest that this shows that withdrawing treatment is in this case morally worse than withholding it.

However, in the case of Prima and Secunda the moral equivalence thesis states that not only are withdrawing and withholding treatment the same, but that they are the same because the moral importance, the moral status of Prima and Secunda, are *ex hypothesi* the same. If the moral status of Prima and Secunda are not equally important, then of course *that* is a reason for preferring one to the other. The decision as to whether treatment of one involves withdrawing or withholding treatment and treatment of the other does not, will not arise. The moral equivalence thesis denies parents the right to choose between Prima and Secunda in a way that effectively accords one a greater moral status than the other.

If, for example, the parents had arrived before either child had been attached to the equipment, they would not have been entitled to choose which should get the treatment, they would have had morally speaking, to abide by the toss of a coin. So that the reason why they may not now re-allocate the respirator to Secunda is the same reason that they could not have simply allocated it to Secunda in the first place. They were not entitled to choose in a way that demonstrated a moral preference for one child over the other which amounted to disvaluing the life of the other. They were morally required to choose in a way that demonstrated no preference. One method of doing this is of course by tossing a coin. The reason that they cannot change the decision the doctors have made is not that it has already been made, nor that it would involve withdrawing rather than withholding treatment, but simply that they are not entitled to make an unjust choice.

Under the subheading 'Is the method of choosing what really matters?', the authors seem again to have missed this point. They say: 'Even if the parents had asked for a repeat toss (in which case the method of choosing in the first instance would be exactly the same as the proposed second method), the claims accruing from Prima's original acquisition would seem to be violated by subjecting her to a 50 per cent chance of losing what she had already gained'. It would be pointless to subject the twins to a second coin toss, not because of any claims accruing from the commencement of treatment, but simply because there is nothing to be gained morally by reversing or overruling a fair procedure.

This we can see by imagining the following: suppose the parents had arrived *before* the doctors and chosen their favourite and then demanded that the doctors treat Secunda rather than Prima. In my view the doctors would not only have no obligation to accede to this request, but they would have an obligation to adopt a fair procedure, namely to toss a coin. What Sulmasy and Sugarman need to do is demonstrate that some rights accrue by original acquisition by an unjust procedure; they can't simply stipulate that such rights have accrued as they do in this section. The fact that 'Prima could not be held morally responsible for the unfair decision from

Key words

Ethics; medical ethics; withholding treatment; allowing to die; historical entitlement theory.

which she has benefited, and she would still have a reasonable claim to the respirator by virtue of the fact that she had already been started on therapy and held original acquisition' is not relevant. It is just a repetition of the stipulation that prior occupancy confers a special claim. Secunda is also not morally responsible for the unfair decision from which she has suffered and her claim to a fair chance is not diminished by the fact that an unfair procedure has already allocated the disputed resource elsewhere.

We do very often, in many realms of life, reverse for example, unjust allocations or discriminatory hiring policies. The fact that someone has been wrongly selected for a job out of prejudice does not confirm that person in a right to prevent that procedure from being overturned by some claim of prior occupancy.

The point that Sulmasy and Sugarman seem to have confused is the fact that the prior occupancy is appealing because and when it is a form of just natural lottery. The hypothesis is that in the absence of any particular reason to bestow a piece of property on one

person rather than on another, prior occupancy or prior possession is a just allocation procedure which should not be overturned without a powerful moral reason. But where that prior acquisition or occupancy is unjust in some way then, even according to historical entitlement theory it does not confer special moral rights.

The crucial point is that Sulmasy and Sugarman believe that they have argued that 'even if the original choice were *unjust*, an innocent party benefiting from that unjust decision may still have a valid claim to continue treatment', but they have not argued for this they have merely stated it and restated it. The closest they have got to providing an argument for this position is to suggest that their example of Prima and Secunda reveals powerful intuitions that there is such a valid claim. However, I do not believe that these powerful intuitions are widely shared and that people would intuitively, for example, feel that it would be right for the parents to make an unjust allocation that could not then be revised.

News and notes

Volunteers in Research and Testing

A conference entitled Volunteers in Research and Testing will be held from 3–5 April next year in Manchester.

The conference will discuss and assess the potential benefits and current limitations of human volunteer studies, including their possible contribution to the reduction, refinement and replacement of animal experiments.

For further information contact: Mrs Bryony Close, Battleborough Lane, Brent Knoll, Highbridge, Somerset TA9 4DS; Telephone/fax: 0278 760843.

The conference is organised by animal welfare charities, industry and the research community.