

M 81 0285

1981

Rights and Responsibilities in Modern Medicine: The Second  
Volume in a Series on Ethics, Humanism, and Medicine: 145-152  
© 1981 Alan R. Liss, Inc., 150 Fifth Avenue, New York, NY 10011

THE REFUSAL TO STERILIZE ELIZABETH STANLEY IS NOT PATERNALISM

Eric J. Cassell, M.D., F.A.C.P.  
Cornell University Medical College  
1300 York Avenue, New York, N.Y. 10021

Let me start with Elizabeth Stanley. I do not believe that this is a case of paternalism. Dr. Stanley would like a tubal ligation. I would not like to ligate Elizabeth Stanley's fallopian tubes. I am not the only surgeon in town and Liz can go to another surgeon. I have not made a decision for her, I have made a decision for me.

I knew Elizabeth's father from way back and we were in the Army together in an infantry unit around Salerno that had a bad time for a few days. He died when Liz was still in high school but we had always kept in touch. He was a good man whom I owe a favor, dead or not. So when she came here before her internship and spoke to me I thought that she was Arnold's kid and part of my skin. When I looked at her I could see Arnold. I couldn't really but I was so glad knowing that she was a doctor and would be at County. I was really happy about it. So when she came in the first time to talk about the tubal I was totally unprepared. I wanted to tell her about her father and about what we all wanted, and hoped for, and talked about endlessly because we were even younger than she is. You know, the way you would talk to the child of a friend who was old enough to know something and to joke and talk about wars and parents and training programs. Someone who was at the same time your child and not your child. A surgeon and a friend, but a young friend. Anyway that was definitely not Elizabeth Stanley. I got the whole tubal ligation number by the Woman's Movement book. Every objection that I offered was countered not by any content but

merely by her telling me about her rights as an individual--and also how I had let her down. (Never entered her mind for even a moment that she might have let me down (to say nothing of Arnold)). So after hearing her out (and feeling like someone going back to the restaurant where they ate the first great meal of their lives and seeing cardboard arrive on the plate) I said that I was sorry, but I was not going to tie her tubes and that was the end of it. She said it was certainly not the end of it. She had rights and no paternalistic SOB was going to ruin her life whether he knew her father or not. That was what Ethics Committees were for and we would discuss it next in front of the committee. To tell you the honest truth, all the substantive matters about having children or not, reversibility or not, surgical risk or not, the actual factual basis for her desire to become infertile got lost in the yelling that followed my saying NO. So we don't misunderstand each other, I am not about to sterilize Arnold's kid just because as a green no-nothing intern who has had loose bowels, sweaty hands and no sleep for a month, she thinks that is the way she is going to show the world that she is grown-up. Okay, I may not know why she wants to do it but I don't think she does either. There isn't a doctor in the world who does not know that people change their minds. When decisions are made that have permanent effects and could be put off, I think it is perfectly reasonable to require that enough time pass to insure that the person has given the decision sufficient thought. That is not the case here. So I think if she wants to get her tubes tied let her wait a year. If she gets pregnant before then I will happily abort her. Meanwhile, why do I have to act as if every thought that crossed the mind of every person--female or not, doctor or not, had the same weight as the Magna Carta. Let them do what they want and me do what I want. As long as mine is not the final determinant than it is simply not paternalism.

Elizabeth's biggest gripe with me seemed to be that I did not respect her rights as an

individual. I thought that If I heard the word 'individual' once more I was going to hemorrhage. She kept telling me about her rights as an individual and I kept asking her what she meant by the word 'individual'. Not surprisingly she never did define it. It is an interesting thing about medical schools and training programs that they teach an enormous amount about disease, pathophysiology, and all the sciences from anatomy to xerography that back up our knowledge about disease but nowhere do they teach what a patient is. I suppose the reason is that it is considered self-evident what a patient is.

Like so many other self-evident concepts, this one also deserves some thought. A patient is, of course, a person. That is another seemingly obvious word whose meaning is somewhat obscure. You will not find the term in a medical dictionary! My daughter once said "I am not a servant and I am not a child--I am a PERSON!" Her declaration, not surprisingly, was in the context of washing the dishes). I said "you are telling me what a person is not, Justine, but what IS a person." She like the rest of us was not too clear on the matter. Failing a definition of person, we fall back on the word 'individual'.

Since I am not a philosopher, I am not qualified to talk about the concept of individual except as it expresses itself in the way most people talk and act in regard to it. In the American heritage the concept of the individual seems extraordinarily important. (Actually the word 'person' is used in the Constitution interchangably with the word 'individual'.) But as far as I can tell the derivation of the term, even as it is most often used in medicine, is primarily political. In which case we speak of the individual VERSUS the state, or VERSUS another individual. In those contexts what is usually being referred to are the rights of individuals, or their obligations, and so on. That is the way Elizabeth Stanley used the term when she spoke about her right to have a tubal ligation. Stanley Hauerwas told me that the word

'individual' was originally a term in logic referring to unity which was then borrowed by the political philosophers of the Enlightenment.

It seems to me that to be an individual in the sense that it is most often used in this country is only one aspect of being a person--but by no means the only aspect. Further, as I noted earlier, in the sense it is usually used it is a political concept. Clearly all persons have a political facet--that is they are members of a state, a government, a civil unit, or some other polity, but most of us would not like to be defined SOLELY by our political aspect. Elizabeth Stanley was quite definite about it being a political matter. She was sure that my refusal to sterilize her was not only paternalistic, but a repressive stance against women as a group. In that sense what seemed to me to be a personal matter was to her political because of its implications for the group.

Hidden within the word 'individual' are two conflicting meanings. And further, that conflict, hidden as it may be, has sharpened in recent decades. The political meaning of the word individual is indifferent to individual differences. An individual has rights regardless of gender, color, ethnic group, religion and also regardless of whether he or she is tall or short, fat or thin, fast or slow or even with or without glucose-5-phosphate dehydrogenase. That is odd because if a physician was indifferent to individual differences while treating sick people, disaster would follow. That is because things like stature, weight, gender, even religion and ethnic group have an effect on presentation, clinical course, treatment and outcome of illness. I know very well that when Dr. Stanley was speaking about her rights as an individual she meant that aspect of herself that has no individuality. Merely herself as a free standing entity was what (or who) was entitled to the tubal ligation. But there is something basically paradoxical about that demand because a tubal ligation has very personal

meanings. ( I will return to the word 'personal' shortly.)

The two conflicting meanings of the word individual, one indifferent to individual differences and the other solely concerned with differences, cause greater trouble now, I believe, than at any time in the history of the word. Because this is an era of Radical Individuality, or another term might be Radical Autonomy. A time where individual in the sense of individual differences has achieved its greatest importance. I matter nowadays not only because I am an individual versus the government or another individual or group, but because I am ME! With all the talents, skills, Failings, hopes, desires, aspirations, anxieties, concerns, needs, and etc. etc. that make up the unique individual that is me. But now we have come upon another Paradox. ME, with all those desires, fears, hopes, etc. cannot be seen apart from my past, my parents, my training, my friends, my country, my traditions because the ME that I AM is inseparable from those other things.

When I the individual becomes ME, I leave the almost statistical configuration of the political individual and become a person. A person is a very complex complex. A person contains within himself or herself: A lived past, a family's lived past, culture and society, roles, the political individual, associations, an unconscious, a body and relationships to it, day to day behaviors, a private inner life, a hoped for future, and perhaps more.

So when I was talking to Elizabeth Stanley about a tubal ligation-- when any physician considers an ethical issue in medicine, he or she cannot be content with individual (in the political sense) or Radical Autonomy, what must always be harkened back to are those flesh and blood real persons that are our concern of whom only one part is the individual in a political sense. (I think it is fair to say that our whole nation is having trouble squaring the two

different meanings of the word individual. We are justly proud of our heritage of individual liberties but we simply do not know how to deal with the fact that some individuals are better or worse at some things than others and to treat everybody as though they have the same talents because they have the same rights does a great disservice to those with lesser abilities.)

If that is what a person is, then what is a patient? A patient is a sick person. As sick modifies person linguistically, so sickness modifies a person in real life. It is a fundamental error to consider a sick person the same as a well person but with a disease stuck on the side--much as the person would carry a knapsack. Illness, as anybody knows who works with the sick or who has ever really been sick, can change behavior, thinking, or judgement (as well as a lot of other things). As Milton Erikson said "It is a matter of common knowledge often overlooked, disregarded or rejected that a patient can be silly, forgetful, absurd, unreasonable, illogical, incapable of acting with common sense, and very often governed and directed in his behavior by emotions and by unknown, unrecognizable, and perhaps perhaps undiscoverable unconscious needs and forces which are far from reasonable. logical or sensible."

The solution to the ethical problems in medicine raised by those potential characteristics of patienthood is not to pretend that they are untrue. That might be good philosophy, but it is bad medicine. The difficulty is increased by the fact that patients start to become all those things that Erikson describes, no light goes on over their head to announce the fact. They may look and sound just as reasonable as they did instants previously. What should we do about those characteristics of the sick person? The medical response of times past was to assume control over the decision making as though the patient was incapable. That is what is called paternalism and it is justly condemned. An alternative response

by physicians is the abdication of responsibility. That is what physicians do who pretend that a sick person is the same in every way as a well person. Of course the sick person is still an individual in the political sense of having rights (and obligations) but not necessarily in the ability to exercise those rights. A better response than either paternalism or the abdication of responsibility is an new understanding of the function of medicine. Here the job of the physician is to help the patient maintain his or her autonomy to the degree possible in the face of illness. Gerald Dworkin defined autonomy as being made up of authenticity and independence. It is clear that physicians have the ability to help the patient maintain his or her authenticity in the face of illness. Equally they have the capacity to destroy authenticity. In the same manner they can enhance or destroy the patient's independence--freedom of choice, by how they provide information for decision making or facilitate the patient's ability to act in his or her own best interests. Physicians' capacities in these regards imply not only their acceptance of those responsibilities, but something special about their relationship with their patients.

Indeed, the doctor-patient relationship does carry within it the potential for the physician to act as true agent for the patient in the battle against sickness.

Space does not permit me to go into detail, but several things about the relationship must be made clear. It is possible for the physician to blend his or her knowledge of the body and disease with the knowledge acquired about the patient so that decisions can be made by the patient that are authentic to the patient--not merely what the physician thinks the patient wants. Learning how to do that requires training and experience, but most of all it requires acknowledging the importance of such shared decisions. Further, the relationship between doctor and patient occurs over time and involves changes in the patient's capacities, the doctor's

knowledge and the relationship itself. The doctor-patient relationship is little understood in part because the society has laid such stress on the individual that there has not been a consonant growth in our knowledge of such relations. But lack of understanding should not diminish our respect for its power or importance in the care of the sick.

In the light of all that do you wonder that I refused Elizabeth's request to tie her tubes. I may never accede simply because I think she is wrong and in the final analysis it is my act, not merely her decision, that must be judged. But her framework of analysis, based as it is on individual rights--the individual as a political entity, is entirely inadequate to her decision. The individual in that sense of the term is but one part of a person and the tubal ligation involves the entire person. So does the care of the sick.

Rights and Responsibilities in Modern Medicine:  
Volume in a Series on Ethics, Humanism, and Medicine  
DISCUSSION SUMMARY: THE REFUSAL TO STERILIZE

Marc D. Basson

Director, CEHM  
University of Michigan  
Ann Arbor, Michigan

Many of the participants questioned Elizabeth motivation and certainty, noting the irreversibility of the decision and her insistence on having the procedure. They also commented on the likely impairment of her making ability by the stress of internship. Participants were almost unanimous that the doctor had refer Elizabeth to another competent gynecologist operate or to perform the tubal ligation himself. That Elizabeth's apparent intelligence and fund of certainly qualified her to give an informed consent the proper role of the physician was to help Elizabeth her own life.

The discussants were less certain whether the gynecologist was himself obligated to do the sterilization to refuse because of his own belief that the was not indicated. "If a doctor is morally oppose, practice," commented one, "then he ought to act on his convictions." Most did not see a contradiction in saying the doctor should refer the patient to someone else should not do it himself. "This much is owed to the out of respect for his values," commented one lawyer. About 15 percent said they would do the surgery even if they thought the idea foolish. "She is a mature and dependent woman and has the right to make her own decisions," a physician stated. "I offer medical advice to patients, but I would no more force them on a patient than the former." Finally, five percent

