

MEDICAL ETHICS

Doctors' strike—an ethical justification

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Introduction

A strike by health professionals meets with a great deal of resistance, not only from the general public but also from within the profession. It also raises many ethical dilemmas [1]. The arguments put forward against a strike by doctors are varied: (a) it would result in ordinarily avoidable suffering and death; (b) it would be a breach of the implicit contract doctors have entered into with their patients; (c) it would be against the code of ethics doctors are sworn to; (d) it would amount to holding to ransom a weak and vulnerable segment of the population for material gain; (e) it would shatter the image of doctors as selfless healers; (f) doctors are already overpaid; and so on. This paper attempts to argue a position that a strike by doctors can be justified from an ethical viewpoint. Although this paper restricts itself to doctors, many of the arguments can be extended to other health care professionals.

Traditionally, physicians have had considerable power over their patients and their own manner of medical practice. With the increasing socialisation of medical care and the technological revolution, this power has been largely taken over by institutions and administrators [2]. In New Zealand, in 1983, doctors spent 46.9% of their medical working time in public hospital practice and junior doctors nearly all their time [3]. The situation is similar in many other developed countries [4]. The working conditions in these hospitals are dependent not only upon the financial status of the community but also the political decisions of the government. The traditional autonomy of the doctor has altered, as has his role and the expectations from him. With the technological developments and the enunciation of elaborate ethical codes and declarations [5], the physician's responsibilities have only become greater. It is, therefore, clear that a situation can arise when doctors are dissatisfied with their working conditions and are powerless to change them. A recourse to strike is, then, understandable. The 1983 strike by doctors in Israel is a case in point [1]. The junior doctors in New Zealand recently presented a strong case for their threatened industrial action [6]. However, does the understandability of a strike make it morally conscionable? Let us proceed to address this problem.

Moral duties

The philosopher Immanuel Kant based his moral theory on what he called the 'supreme moral law' [7]. Stated simply, the law meant that an agent acted morally when his action was based on a principle which he would will to become a universal law. Applying this principle, one can probably say that the test of the morality of a doctors' strike would be in establishing that such action is universalisable, ie. doctors, or other professionals under similar circumstances—anywhere—would be

justified in striking given the same conditions. Here we run into immediate difficulty because the decision procedure to decide this universalisability is quite subjective, and people will disagree irrespective of whether they go by intuition or logical argument. The next obvious question to ask is: 'Would the doctors who decide to strike have supported such a strike if they were members of the government or the general public?' Many doctors may answer this in the affirmative although there can be no clear consensus because of the inherent bias in any such assessment. One statement can, however, be made with confidence—the answer to the above question is not a categorical 'no'. The Kantian approach, therefore, leads us to the conclusion that a strike is not necessarily immoral although it does not help us decide a particular case. For this we look towards other approaches.

Other moral philosophers (eg, W D Ross) described *prima facie* moral obligations which they said guided behaviour. Two of these, the duties of fidelity (the obligation to keep promises) and beneficence (obligation to try to help others), would clearly endorse against a doctors' strike although one could argue that the promise is with current and not future patients and beneficence can be short- or long-term. There are other duties, however, which could conflict with the above, eg, the duty to justice (which includes justice to oneself and one's family) and a duty to self-improvement. The philosophers do not provide some determinate procedure to resolve moral conflicts and often leave the decisions to our basic moral intuitions. One could argue in favour of a strike if the injustice caused by it to the patients is outweighed by the justice done to the doctors and their families. The junior doctors in New Zealand put forward a convincing case that they were suffering [6] and could justify the suffering their strike would cause to others. The matter gets complicated when one includes death as a consequence of the strike and this will be discussed later.

Utilitarian arguments

If one believes that what is moral is that which results in the "greatest happiness of the greatest number", the case turns on a comparison between the harm likely from the strike, including the possibility of avoidable death, and the likely good that may result. When dealing with such intangibles, a hedonic calculus can be quite frustrating. The treatment of many patients would be delayed or thwarted by a strike. For some it may mean prolongation of suffering, others may suffer irreversible damage because of delayed care and some may even die. A few may, however, considering the potential dangers of some medical practices, actually be better off from not seeing a doctor [8] but let us not consider this a very significant number. The main positive is the possible benefit in the living conditions of the doctors and their families. As the working conditions of the doctors improve, the doctors will be under less pressure, will not

be over-worked or otherwise incapacitated and will provide better care, make fewer mistakes and possibly save more lives. Some countries, New Zealand for example, will be able to dissuade their best medical talent from emigrating. The prestige of the profession will be maintained and it will continue to attract bright students. The community will benefit in the long run.

Certain important questions arise at this stage of the discussion.

Can immediate needs be set aside in anticipation of future benefit? The traditional Hippocratic physician would say "no" because of his individualistic, patient-benefitting ethic [9]. The argument against this is that physicians, as members of a health-care profession, should not perpetuate poor health care even if betterment can be achieved only through a strike. Most people would accept that doctors have a greater responsibility to community health than mere treatment of individual patients. Doctors also have a duty to the physician-less members of the society and to ensure that the less well-off are not robbed of good quality health care [9]. If a strike is the means to this end, it can indeed be morally justified. This, however, does not address the issue of the special status of the patient-physician contract and this matter will be discussed later.

Can death ever be a just price for any ends? Detractors of the strike argue that even one avoidable death would condemn the action morally because "human life cannot be valued in material terms". One counter-argument is that short-term loss will be adequately compensated in the long run by lives saved subsequently. But can one equate human lives in this manner? The question is an emotionally charged one but one need only look at some similar examples to show that human life is indeed treated relatively by society [10]. Death in wars and revolutions is glorified, and capital punishment is justified as a deterrent for further murders. The road death toll is considered an acceptable price for the freedom to drive one's own vehicle. The sale of alcohol is promoted in spite of the huge cost in terms of health and life, partly because of the revenue it brings in for the government and the jobs it creates. This moral analysis can be extended to make many allocations of resources morally condemnable. Is a Rarotongan holiday justifiable if the money spent could have saved a few lives in Africa? Should we finance pleasure so long as there is want in the world? The examples can, no doubt, be multiplied and clearly demonstrate that we treat life in relative terms even though we profess its absolutism.

Why then are doctors judged by different standards? There are probably two reasons—proximity and contractual obligation [10]. By 'proximity' one means that the doctor 'is there' when the death or suffering occurs and this gives him a special responsibility, somewhat like a Good Samaritan. The reason is real enough—the human impact of a disaster close at hand is always greater even though a moral position can be taken against the relevance of temporal or geographical distance. But what are the physician's obligations to be always there? This can be answered only after a review of the physician-patient contract.

A limited strike? Some of the moral dilemmas can be bypassed if the doctors continue to provide emergency medical care during the strike so as to reduce the likelihood of death resulting from it. It could be argued that long waiting lists for elective surgery and routine examinations already exist in most public hospitals due

to inadequate facilities, and a prolongation of the lists because of a strike cannot be considered morally damning. The junior doctors in New Zealand proposed such an action [6]. The Israeli doctors provided an alternative medical service for the duration of the strike [1]. A limited strike, therefore, poses fewer ethical problems and is arguably an equally effective political weapon.

The professional contract

Doctors are considered to be under a special moral obligation because of the very nature of the physician-patient contract which places a unique responsibility on them to look after their patients. The profession has a similar contract with society [11]. It is further argued that they took upon themselves this special obligation willingly and are expected to honour it (the fidelity clause), thus precluding any strike action. Doctors are even cautioned that if they did strike work, it would ruin the faith of the public in the profession and medical practice would suffer seriously.

I think this reflects a rather simplistic understanding of the doctor-patient contract in modern times and the moral argument is not so easily settled. A person who chooses to become a doctor does not make an explicit or implicit declaration that he eschews self-interest for all time to come. It is significant that the suggestion for the inclusion of a no strike clause in the job contracts of doctors is not taken seriously. A doctor does have a special contract with the individual patient he accepts for treatment [12] and is obliged to provide his skills to the best. This also implies continuation of care once treatment has been started, or transfer of care to another competent physician. A doctor cannot be said to have a special obligation towards individuals who might become his patients in the future were he to continue practising medicine, nor does he have a moral duty to always continue being a doctor, or to never be absent from work or fall ill or cancel an appointment for any other reason. He has a contract with society to act responsibly when he 'is there' but no binding to be always available 'under any circumstances'. Furthermore, in countries where medicine is largely socialised and doctors are employees of the state, they enter into contracts with their patients via a third party—the hospital. Although this does not take away the physician's primary responsibility to the patient [12], it does make the provision of on-going health care a joint responsibility of the physician and the institution [13]. One thus has a triangle—hospital, physician, patient—all three arms of which are important. If the hospital withdraws from its contract of providing the doctor with adequate facilities to fulfil his obligations, the sanctity of the other contracts becomes questionable.

Is a strike compatible with medicine as a profession? The answer to this hinges upon definition of the word 'profession'. If being professional implies a certain learned competence, getting paid for what others do free, and a self-conscious reflection on standards of conduct [14], a justifiable strike is unlikely to affect the status. A cornerstone of professional practice is its unique trustworthiness [15]. How does a strike affect this aspect of service? The public image of physicians has changed over recent years—technical expertise is stressed over healing, paternalism is giving way to a more equal relationship, physicians are more defensive and patients more litigant [8]. It can be said that there is an antitrust challenge to medicine, as to other professions [14]. But self-sacrifice is not necessarily the

best method of increasing trust. It only creates unrealistic expectations, making dissatisfaction more likely. Trustworthiness will suffer if doctors make unreasonable demands, strike work without adequate notice, seem inflexible or actively undermine patient-care. But, being seen as human cannot be too detrimental! And, if physicians have special obligations, they can demand special benefits. In stressing that professionals need to look at their own interests in addition to the interests of their clients, a strike provides a good dose of realism [9]. It shatters a somewhat antiquated myth of sainthood.

Not all doctors agree

A call for a strike does not get universal approval from doctors, as would be the case for any other profession. This is because even the same facts lead to different ethical conclusions for different people. The final word may never be said and the aim of this paper is to argue that those who profess strike action are not necessarily immoral or less moral. Junior doctors are more likely to resort to a strike than their senior colleagues. One reason may be that they are more cognisant of the doctor's changing role and status in society and they have more to gain and less to lose from a strike. The more important reason to my mind, however, is that the public health system exploits the junior doctor quite mercilessly in the name of training, and senior physicians often support this injustice as a historical legacy [16]. It is also interesting that some doctors continue to hold on to old ideas of professional obligation and doctors image in spite of the change in the public's perceptions.

Conclusions

There are many arguments to support a decision by doctors to strike under some conditions. The last qualification is perhaps unnecessary because no strike action should be without good cause and a responsible

protocol, but it helps underline the fact that the doctors' case is indeed special. This stems out of the nature of the contract physicians have with society and its individuals. This paper argues that, though this contract is special, it is not absolute and other factors need to be considered. Once this is accepted, a utilitarian case can be made for a strike that does not conflict with moral duties and does little damage to the profession's prestige. If at all, it only makes doctors seem more human.

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