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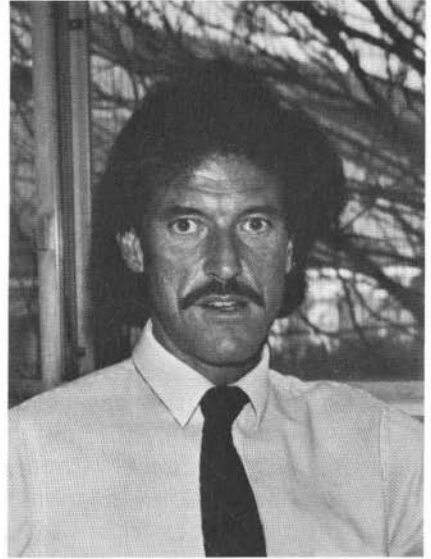
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# Rights and Responsibilities in Medical Ethics

Clifton Perry

*Clifton Perry received his Ph.D. in philosophy from the University of California. He held a post-doctoral clinical fellowship in bioethics at the University of Tennessee and has taught at the University of California and West Virginia University. He is presently an assistant professor of philosophy at San Jose State University. This article and the one following, by Prof. John Ladd, complement one another.*



Recently, attempts have been made to extirpate legalism or talk of rights and duties from the field of medical ethics. In particular, Prof. John Ladd has endeavored to specify important differences between the model of rights and the model which properly captures the ethical aspects essential to the relationship between patient and physician.<sup>1</sup> If Ladd is correct in his analysis, then the ramifications for medical ethics will be both surprising and significant. Unfortunately, it is not quite clear that Ladd's distinction between the model of rights and the model which correctly characterizes the physician-patient relationship is not a distinction without a difference. The objective, therefore, of this paper shall be to note the results of Ladd's distinction and to investigate whether or not differences between the two models warrant the distinction.

## I.

It is usually thought that rights and obligations or duties go hand in hand. A right to X entails a duty suffered by all others not to interfere with the securing of X. Rights are quite often taken as claims which are exercised against others. A right to life is a claim against all

others guaranteeing freedom from attack, except under very special circumstances. Needs, on the other hand, usually do not place upon others the duty to satisfy them. Needs are not claims one has against others. Nevertheless, a second party may be said to have a responsibility to satisfy a first party's need. For example, if one comes upon a starving person, it would seem that one would have the responsibility of helping the individual. We would not, however, say that the starving individual had a right to the required food. The starving individual simply had a need. The second party might be said to have a right to food, for example, if the second party's food actually belonged to the one who is starving. But if the food belonged to the second party, then given that we all have a responsibility to relieve great suffering when it entails no significant sacrifice on our parts, the most that can be said is that the second party should feed the starving person.

There may, of course, be other differences between the model of rights and the model of responsibilities. Indeed, according to Ladd, there are four points of difference between the two models, each of which is sufficient to exclude one modeled relationship from the other. First, rights are "peremptory" while needs are not. Rights impose certain duties the accordance with which is not subject to debate. Needs simpliciter, on the other hand, impose no duties, and behaving in accordance with one's responsibilities may be subject to challenge. Second, no matter how dependent the parties might be upon one another, as far as their relationship is one of right-holder and duty-holder, the two parties are independent of each other and equal. There is, according to Ladd, a "prior" equality between the parties. The notion of a contract would make no sense if one party were able to impose his will upon the other because of some inequality between them.<sup>2</sup> This prior equality fails to obtain in relationships characterized by responsibility. Indeed, in relationships characterized by the model of responsibilities there is an assumed "prior" inequality between the two parties. In general, the inequality intrinsic to relationships of responsibility is exemplified in the principle: "from each according to his/her ability, to each according to his/her needs."<sup>3</sup> In the relationship of responsibility, one party is in a position to extend help or benefit while the reciprocating party stands in need of that specific benefit.

Third, the relationship of rights assumes a prior parity between the parties; it need not entail a respect for individual worth between the parties. The respect which obtains in right relationships is the result of that relationship. The respect which obtains in relationships of responsibility, however, is one of individual worth and consequently serves as the reason for or cause of the responsible relationship being manifest. Finally, responsibilities, it is maintained, are dynamic, while rights are not.<sup>4</sup> Responsibilities change according to the changes in the needs and circumstances between the parties. Such changes, however, do not

affect right relationships. The increase in knowledge, for example, obtained by one party may change or perhaps even eliminate a first party's responsibility to a second. Such an increase in knowledge would not however alter the rights students have against teachers.

## II.

According to Ladd, the patient-physician relationship is more appropriately characterized in terms of the model of responsibilities than in terms of the model of rights. In some cases at least, patients do not have a *right* to physician services nor do physicians have a duty to perform the requested services. Patient requests for physician services are not, Ladd maintains, peremptory. Moreover, patients are in need of help, and physicians are in the appropriate position to extend the requisite help. This need and service are the basis of the relationship between the aforementioned parties. There is, in other words, a prior disparity between the parties which serves as the basis of the patient-physician relationship. In addition, the reciprocal respect between the patient and the physician exists prior to the relationship. Indeed, respect for the physician serves as an impetus for seeing the physician when one is in the necessary physical condition, and it is the respect for individual well-being which initiates appropriate physician behavior. This is not, of course, to deny that respect might not emanate in virtue of the relationship, only that the respect which is essential between the physician and patient is prior to the relationship. Finally, the relationship between the patient and the physician changes according to the health of the patient. As the relationship changes, so also do the responsibilities. Physicians then have certain responsibilities to patients and although not the same, patients have certain reciprocal responsibilities to physicians. This responsibility relationship which obtains between patients and physicians, according to Ladd, eliminates the possibility of characterizing such a relationship according to the model of rights.

If Ladd is correct, there are significant ramifications for the future analysis of the relationship between mother-fetus, and possible organ donor and possible organ recipient. Consider, for instance, the issue of abortion. According to some,<sup>5</sup> although the fetus may have a right to life, i.e., may be treated as a person, it does not have a right to the mother's sacrifice. A right to X does not carry over to a right to all things necessary for X. Thus, although the fetus may have a right to life, the fetus does not have a right to the mother's body which is, at least within the first trimester, necessary for life. Therefore, abortion on demand is not inconsistent with the proposition that the fetus enjoys a right to life.

It may, of course, be thought that the above argument fails since it overlooks the important fact that in an abortion the fetus is killed.

Although a right to life may not be sufficient to guarantee everything necessary for the actual exercise of the right, it is sufficient to guarantee not being killed. Therefore, since the fetus is killed during an abortion and the right to life amounts to a claim held against all others guaranteeing freedom from being killed (without due process), a right to life constitutes a claim against all others guaranteeing freedom from abortion. Unfortunately, there is comparative difference between the paradigm case of wrongfully violating one's right to life and the case of abortion which may prove significant. In the abortion case, the fetus has been separated from a life support system (the mother's body) to which the fetus's right to life is insufficient to lay claim. The intention in the abortion case need not refer to the fetus's death but merely the separation of the mother from the life-dependent fetus. The empirical ramification of the separation is death, but death need not be the motivation of the separation. The motivation could quite consistently be the retainment of all that rightfully belongs to the mother. Thus, abortion might be argued to be analogous to not saving someone after the needy individual has, intentionally or not, placed another in a position of saving them. The paradigm case of wrongfully violating another's right to life, however, has none of these characteristics. In the paradigm case, if the one attacked is wrongfully not being saved, it is only after being put in jeopardy by the attacker. Otherwise, the attacker in the paradigm case is not merely not saving but actually intentionally endeavoring to harm the one attacked.

Given the above remonstrations, it may at least be maintained that the pro-abortion position cannot be as easily dismissed. Nonetheless, even if the fetus may not have a right to all that is necessary for life, the mother may, if Ladd is correct, have a responsibility not to abort. There is, after all, a special relationship which obtains between mother and fetus which, in general, is characterized in terms of concern for the fetus. It is not, however, that the mother is, in fact, just concerned with the fetus. Rather, we generally believe that this concern *should* be shown. Furthermore, the fetus is related to the mother in a way which obviously shows a prior inequality and dependency, an inequality and dependency which may be changed through physical maturation and education. Finally, abortion may be deemed preferable on grounds of self-preservation, or perhaps genetic defect, thus rendering the mother's responsibility not preemptory. It seems that the mother-fetus relation is, according to the above analysis, more properly subsumed under the model of responsibilities than of rights. Although it might very well be true that the fetus may, as a person, possess a right to life and yet not have a right to all things necessary to exercise that initial right, it does not follow that the mother does not have a responsibility to the fetus, the terms of which refer to just those things which are necessary for the fetus to exercise the right to life.

The lack of a right to all that is necessary for the exercise of the right to life is either irrelevant or at least not as significant as the presence of mother's responsibility to the fetus.

Consider also the issue of organ procurement. Although we may not have a *right* to the deceased's organs, we all may have, if Ladd's model of responsibility is employed, the pre-mortem responsibility to donate or allow the salvaging of them.<sup>6</sup> It might be argued that a special relationship obtains not just between every living being and every other but between every patient who needs a transplantable organ and every living person who will one day no longer be in a position to use his or her organs. If the model of responsibility is characterized by the principle of "to each according to their needs, from each according to their abilities," then it would seem that each of us has the pre-mortem responsibility to donate or allow the salvaging of our organs, post-mortem. The relationship between those in need of organs and those who will someday no longer be in the physical condition to utilize them, appears to satisfy all the conditions specified in the model of responsibility. As was noted above, there would appear to obtain a relation which might be characterized in terms of concern and respect between organ needer and organ donor which is perhaps not unlike that said to obtain between past and present generations and future generations. Furthermore, there is an obvious prior disparity between the parties. There is no sacrifice to be made, however, by the living as there is in the prior example concerned with abortion. Moreover, since it is not a right of the person in need of organs to have the deceased's organs, the request for such is not peremptory. There may, that is, be significant empirical considerations which will determine whether or not a given individual should receive a needed organ, e.g., prior rate of success of such transplants, efficacy of transplant to abate human suffering or death, religious beliefs of the reluctant donor, etc. Finally, such a dependency may be eliminated once the organ is transplanted and may even be superseded by technological advancement whereby artificial parts are produced which function more effectively than biological parts. Thus, each person's responsibility to donate or likewise give up one's organs might obtain only so long as there was a need for such. Such contingent circumstances would conceivably not affect a relationship characterized in terms of rights.

The above, if correct, constitutes an application of Ladd's model of needs and responsibilities. Each example differs from the paradigm example of the patient-physician relationship only in that both omit reference to the physician. In the former case the relationship between patient and potential patient has been investigated while in the latter case the relationship between patient and potential non-patient has been analyzed. This application may be taken as either the significant result of a more correct ethical analysis of medical relationships (as in

the case of the mother and fetus) or as a surprising *reductio* of Ladd's position (as in the case of organ procurement), i.e., that since such an application follows from Ladd's position and since such an application is ludicrous, Ladd's position is untenable. No matter how significant or surprising the results, Ladd's position may prove unacceptable upon further investigation.

### III.

It is obvious that Ladd intends the distinction between the two models to be mutually exclusive. If an act is properly characterized in terms of the rights model, then it cannot also be described in terms of needs and responsibilities.<sup>7</sup> But is this presentation correct?

Ladd contends that rights and duties but not needs and responsibilities are preemptory. This, however, seems at least suspect. Rights are never "carte blanche"; they are always circumscribed by conditions governing application. We have a right to free speech but this does not allow slander or the unwarranted screaming of "fire" in a crowded theater. We have the right to freedom of religion but this does not permit, under religious ritual, the sacrificing of vestal virgins or perhaps, more realistically, the concomitant taking of more than one marriage partner. Rights come, as it were *prima facie* or defeasibly. If this is correct, in what way are rights and duties preemptory while needs and responsibilities are not?

It might be suggested that rights are preemptory in the sense that when an agent has a legitimate right to X, i.e., when the agent's right to X does not conflict with another's right or against impersonal prohibitions, then there can be no debate over whether or not the agent can have X. The denial of X to the agent calls for censure of the duty holder. This may be quite true and yet fail to distinguish rights from responsibilities. If an agent A can be shown to have a responsibility to do X because of a special relationship with another, B, can there be debate over whether or not the agent B can justifiably expect A to do X? Would B's failure to do X not bring about moral censure?

Second, the concept of a contract, Ladd maintains, would make no sense if a prior inequality between the contracting parties allowed one party to achieve domination over the other. This, however, is a remark about the concept of a "contract," not about the preconditions for such. Yet it is the *preconditions* for the responsibility relationships which are said to distinguish the model of rights from that of responsibilities. It would indeed make little sense in a contractual agreement if one party could achieve hegemony by virtue of a pre-existing inequality if that pre-existing inequality were *exactly* what the contract was designed to eliminate or at least circumvent. But this, of course, does not imply that a pre-existing inequality in any way contradicts the notion of a contract. Nor does a pre-existing inequality in any way

militate the possibility or freedom to engage in a contract, unless of course, the inequality concerns the ability to engage in contracts. Indeed, it would seem that like the relationship of responsibilities, contracts are in many cases designed specifically to eliminate pre-existing inequities. If this is correct and the notion of "freedom of contract constitutes a basic concept in the ethic of rights," then it would seem that even though there may be a pre-existing inequality between the parties, this in itself is not sufficient to exclude the characterization of the relationship according to the model of rights anymore than it would be to exclude it from the model of responsibilities.

Again, Ladd's third distinguishing criterion seems easily circumventable. Ladd maintains that respect for another is the result of a right whereas such right is the cause of a responsibility. Now it may be quite true that in relationships characterized in terms of responsibility the relationship of respect is more narrowly defined, e.g., patient and physician, whereas the relationships of rights are more general, e.g., citizen and citizen. Nevertheless, it does not follow that respect follows only from a relationship of rights rather than preceding it. We do after all, have to have respect for others in order to accord them the same privileges we ourselves would like to enjoy perhaps at their expense. Indeed, it might be argued that one gains certain rights only insofar as they are citizens, and whether or not they are treated as citizens is in some measure due to the respect we have for them as autonomous individuals. Again, if the above is correct, respectful relationships may precede right relationships, also.

Finally, it is contended that relationships of responsibility are dynamic while those of rights are not. Ladd contends that, say, an increase in knowledge can change the prior state of inequality and thus eliminate the state of responsibility whereas such an increase in knowledge will not affect a right relationship. Note, however, that an increase in knowledge only allows for the two parties to move in and out of relationships characterized in terms of responsibilities. It does not eliminate the appropriateness of the responsibility relationship in those prior circumstances. As party X becomes more knowledgeable, Y's responsibility may diminish proportionately. This, however, does not mean that where two parties are in similar circumstances, one party does not have a responsibility to the other. This, of course, is true also of rights. Party X may have a right to live unless she/he has committed murder or if a state of civil war perhaps breaks out. But this does not mean that anyone not in the above mentioned circumstances does not enjoy a right to life. That rights are defeasible only implies that whether or not one has a right depends upon the empirical conditions; that one has a right to do X only so long as one is in a particular state. This, however, is the dynamic nature attributed



to responsibility relationships and as such fails to distinguish rights from responsibilities.<sup>8</sup>

If the above arguments have been successful, then, counter Ladd, the models of rights and responsibilities are not mutually exclusive. The model of rights appears related to the model of responsibilities so that the satisfaction of all the conditions for the latter is insufficient to exclude the relationship from the former. If this is true, then one cannot eliminate one model from an area of discourse without doing likewise to the other anymore than one can employ one model without thereby using the other. Thus, the extrapolations of Ladd's initial positions are themselves viable positions only if the mother has a "duty" to the fetus and the living have a "duty" to donate or allow the salvaging of their organs.

#### IV.

It is not clear, however, that the above result is untoward. Relationships of responsibility, as Ladd notes, are inspired by Kantian considerations. A person bears a responsibility toward another by virtue of an appreciation of the individual as an end in himself. Indeed it would be inconsistent, Ladd might contend, for a person to assent to another's quality as an end in himself and yet deny any responsibility toward him. If these are indeed the proper grounds for ascribing responsibilities and given the soundness of the above presented arguments which concluded that Ladd failed to show a significant difference between the models of rights and responsibilities, then if we have responsibilities toward another on such Kantian grounds, he or she has rights against us for the same reasons. At least as presented by Ladd, the difference between the two models resides not with the quality of the relationship but rather with the strength of such. Some rights are very difficult to defeat, e.g., the right to life, whereas some rights are much easier to defeat, e.g., the right to another's organs. The difference in defeasibility of obligatory relationships is what perhaps Ladd captured in his analysis, rather than a qualitative difference in such relationships.<sup>9</sup>

Accordingly, it would seem that persons in need of organ transplants have a highly defeasible moral right of some sort to a deceased's viable organs if it can be shown that we have a responsibility to supply the needy with organs. This right would of course not be directed toward anyone in particular, but would perhaps justify a policy of organ scavenging. The fact that a living person possesses — as well as needs — his own organs is sufficient reason for allowing him to retain his organs.<sup>10</sup> Once dead, however, the original possessor of organs loses special claim to the organs, as well, of course, as any need for them. The needed organs should then be given to needy persons as an execution of our duty toward them.<sup>11</sup>

In the case of abortion, Ladd's analysis leads to the following reasonable consequence. *If* a fetus is taken as having the status of a person, then this fact entails that other persons, notably the mother, have responsibilities and duties toward him. This only constitutes a strong reason to refrain from abortion. This defeasible fetal right to life would necessitate that a prospective mother have some justification for aborting beyond mere caprice, e.g., danger to mother's life.

## V.

It might, nevertheless, be suggested that not all patient-physician relationships can be adequately accounted for in terms of the contractual relationship described in terms of rights and duties. To engage in a contractual relationship with a patient, it must first be assumed that one is interacting with an autonomous, self-directed and responsible individual. Nonetheless, severe illness frequently results in a state of diminished autonomy and responsibility. Although the physician has the *duty* to eventually inform the patient, the physician's *responsibility* to the patient's well-being may call for behavior which might be referred to as "paternalistic." Such paternalistic behavior might be justified when — and perhaps only when — it is designed to further enhance patient self-government (as opposed to militating such self-regulation). Still, the physician who failed to be paternalistic in a situation where the patient was in no position to grant an informed consent, could hardly be considered to have done something wrong. The physician who was, on the other hand, paternalistic in such circumstances, might be said to have engaged in commendable behavior. Thus, it might be suggested that the distinction between the models of rights and responsibilities rests not with Ladd's noted features, but rather in how we might appraise actions. In general, not fulfilling one's *duty* in appropriate circumstances is wrong. Fulfilling one's *duty* in appropriate circumstances is not praiseworthy, but necessary. However, fulfilling one's responsibility in appropriate circumstances is not mandatory but praiseworthy. Consequently, not fulfilling one's responsibility in germane circumstances while not commendable, need not be considered wrong. Thus the physician must (has the duty) to inform the patient in the proper circumstances unless the patient presently fails to be an appropriate candidate for informed consent. In such a case the physician has the responsibility to help the patient regain the status of being such a candidate.

What may result from the above suggestion is the view that the models of rights and responsibilities, while distinct in some areas, are not so because of considerations promulgated by Ladd. Neither are the relationships between patients and physicians to be exclusively

characterized according to one model over the other. Finally, just as both models may be employed in the medical context, so also may both be employed at the periphery of the medical context, e.g., in cases of abortion and organ procurement.

## REFERENCES

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2. Ladd, "Legalism and Medical Ethics," *op. cit.*
3. *Ibid.*
4. See also Eric Cassell, *The Act of Healing* (Philadelphia: J. B. Lippincott Co., 1976).
5. Thomson, Judith J., "A Defense of Abortion," reprinted in Joel Feinberg's *The Problem of Abortion* (California: Wadsworth Publishing Co., 1973), pp. 121-139.
6. See James Muyskens's very interesting essay, "An Alternative Policy for Obtaining Cadaver Organs for Transplantation," *Philosophy and Public Affairs*, vol. 8, no. 1 (Fall, 1978), pp. 89-99. See also Clifton Perry's "Human Organs and the Open Market," *Ethics*, vol. 91, no. 1 (Oct., 1980), pp. 63-71.
7. This might appear odd. See Joel Feinberg's "Supererogation and Rules" in his *Doing and Deserving* (Princeton: Princeton University Press, 1970), pp. 3-24.
8. It could, I suppose, be contended that responsibilities, rather than merely who has them, might be created and eliminated. This, of course, might also be said of rights. Rights to health care and a right to death might be cases where what was not a right might become one and perhaps later be eliminated. In this connection, see also Edward Langerak's "Abortion: Listening to the Middle," *Hastings Center Report*, vol. 9, no. 5 (Oct., 1979), pp. 24-28.
9. This would be especially true of the physician-patient relationship where malpractice is a viable consideration.
10. An interesting case concerns the second kidney of a healthy person. How defeasible a moral right does a dying person have in the necessary circumstances to a healthy person's second kidney?
11. Indeed, if Hare is correct and the Golden Rule is a means of ascertaining obligatory relationships, then it would seem especially appropriate to describe the relationship between those in need of organs and those who could donate organs in terms of obligation. See R. M. Hare, "Abortion and the Golden Rule," *Philosophy and Public Affairs*, vol. 4, Spring, 1975, pp. 201-222.

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