

ISSA Proceedings 2006 - Moral And Legal Arguments In Modern Bioethics



Bioethics as an interdisciplinary scientific trend becomes outlined in the context of common stylistics typical for post-nonclassical science of the last third of the XXth century as a whole when it is enriched with such unusual for classical science ideals and arguments as well-being of a man and mankind, good and morals, duty and responsibility for the results achieved in the process of scientific investigation of human objects.

The introduction of new :medical technologies into practice (methods of artificial impregnation, surrogate motherhood, prenatal diagnostics), the actualization of problems of transplantation, euthanasia, biomedical experiments with involvement of human beings and animals, the necessity of moral, ethic and legal regulation of collisions arising in the process of biomedical investigations served as a specific social demand for the formation of bioethics.

The thirty years period of existence of this interdisciplinary trend uniting biological knowledge and human values and representing “a systematic investigation of human’s behavior in the field of sciences of life and health care so far as the behavior is considered in the context of moral values and principles” (Encyclopedia of Bioethics, 1995, 102) was connected with the dynamics of bioethical problems ranging from the empirical arguments and descriptions of doctor’s moral to the philosophic introspection of morals in the area of biomedical study. Beginning from the second half of 80s, quite a powerful layer of philosophic knowledge transforming the conceptual foundations of traditional model of bioethics of the Western type was formed alongside with the development of biomedical technologies. The problems of personal rights and liberties typical for bioethics were actualized in a new way; a wider understanding of freedom concept was formed including the recognition of personal autonomy. In the framework of contemporary interpretation of personal autonomy it is regarded as the basic ethic value manifested as a patient’s free choice of either medically possible or medically human. More profound ethics of

dialogue combined with the principle of informed consent replaces the ethics of paternalism that dominated in traditional model of bioethics. Instead of priority absolutization of both the doctor or biologist (experimenter) and the patient (or probationer), the modern model of bioethics prefers the argument structures aimed at coordination in grounding the rights and duties of the sides, the active attraction of patients to make decisions in choosing treatment methods especially in case of risk for the person's life.

As far as our knowledge of living matter becomes more extensive, the main philosophical accent in considering the category of freedom is shifted from the *consumer's freedom* ("freedom from") to the *creative freedom* ("freedom for. At the same time, the "freedom from" is interpreted as the present-day person ability to overcome the natural forms of dependency on the outer world and to satisfy its growing demands (prolongation of active life period including even life maintenance at a vegetable state, curing the illnesses that were incurable before, freedom in changing the appearance and/or gender, personal choice to have or not to have children even without a man, etc). The modern level of biochemical investigations makes it possible for a person to achieve a certain level of argumentation ("freedom from"), but getting separated from the nature and towering above the world the person sometimes becomes more and more dependant on the modern technique and only the natural unity of person and Space, creation of himself and moral self improvement makes a person closer to creative freedom of argumentation ("freedom for himself"). The value status of freedom in the process of development of our knowledge of the alive nature, in performing biomedical investigations dealing with the unique isolated objects (human genome, socio-natural systems) supposes the necessity of self-restriction from the side of researchers and the formation of argumentational concept of collective responsibility for the scientific study results as well as for the unity of the mankind. The concept of responsibility transforms from individual argumentation to a rank of collective responsibility argumentation for prejudice caused to people and nature.

Within the frames of bioethical argumentational discourse where morals appears traditionally in its highest sense since it affects inter-personal relations (doctor - patient, investigator - probationer) at existential boundary situations (on the verge of life and death, health and illness), the categories of justice, duty and humanism are philosophically revised. It becomes clear, that humanistic paradigm

in bioethics can be implemented not only in case of observance of moral arguments and principles but in case of strict adherence to legal arguments and standards too. The concept of justice supposes the presence of social component and corresponding equal access to common wealth and availability of pharmacological means required for health maintenance.

The traditional bioethical arguments and categories of duty and welfare that were expressed in the Hippocrates's formula "don't make harm" (i.e. use only the medicines that make no harm to patient) were extended in the modern bioethics by transforming the above formula into "not only make no harm, but make good" although the interpretation of the good deed concept is not monosemantic especially in discussing the problems of life maintenance at vegetable level, cloning of living creatures and even a human being, etc.

Thus, the modern paradigm of bioethics is characteristic for the radical turn from the arguments of empirical description of medical morals to the thorough philosophic argumentation - the revision of grounds of morals in medical studies, concepts of moral values, widening of problem area of bioethics by enriching it with moral, philosophical, legal arguments and components and by integration of different arguments and kinds of values: biological (physical existence, health, freedom of pain, etc), social (equal possibility, availability of all medicines and services, etc), ecological (understanding of the nature self-value, its originality, co-evolution), personal (safety, self-esteem, etc).

The latter appears in the Western model of bioethics as an institutionally organized social technology with the system of standard liberal values providing the observance of personal rights and freedoms in the biomedical area. The protection of civil rights against the negative consequences of modern biomedical technique usage (being the main aim of bioethics) is implemented by using the ethical and legal arguments, developed ethical codes, laws and by increasing the area of responsibility of doctors and biologists as well as by extending their social duties fixed not only at personal but at legal level too. The ethical control mechanisms of doctors and scientists activities are added with developed system of legal supervision, foundation of special bioethical committees, and formation of bioethical education (Encyclopedia of Association, 1993, 1-40).

The post soviet area including the Republic of Belarus is characteristic for its own (domestic) model of bioethics which considers bioethics as interdisciplinary and biologically oriented area of modern knowledge analyzing the moral problems of human being existence and his attitude to life and to certain living organisms. The

development of mainly moral arguments and principles regulating practical activities of people in the study of nature and human being, the moral criteria of social activity aimed at the environment transformation, the evaluation of role and place of a person within the frames of biological reality, theoretical grounds of co-evolution concept of nature and society, the category status of life and death – such is the range of the domestic model of bioethics based on the extended interpretation of its problem area and subject. It is evident that at present we can't develop bioethics in the way accepted in the West with its developed system of legal regulation due to the insufficient propagation of scientific knowledge both among the medical professionals and the population, poor juridical education of people and insufficient availability of equipment for biomedical study.

A priority trend of bioethics is the development of ethical and legal arguments and the analysis of ethical standards of health care taking into consideration the social essence and the main principles of organization and functioning of a human being as a bioethical system. The human being health steps forward as the leading indicator of complex co-evolutional development of the nature-human being systems. In this aspect we can speak of the coincidence of goals of bioethics and ecological ethics in the context of ensuring the ecological safety and health of population under the conditions of environment contamination and changed balance of “Human being-Nature” system.

The status of bioethical arguments and criteria in the Republic of Belarus at present has a special significance due to the crisis state of balance in the system of “Human being-Nature”. The results of biomedical investigations show the direct and implicit threat to population health and to gene pool safety owing to complex radioactive and chemical pollution of Belarusian territory. The Chernobyl catastrophe (April, 1986) played especially negative role in this process as the greatest man-caused tragedy in the history of mankind. Namely this catastrophe caused especially great damage to the Republic of Belarus and showed that such catastrophes had no boundaries and that the world was in greatest ecological integrity thus reminding the topicality of V. Vemadsky's idea of the integrity both in planetary and Universe aspects.

Biomedical and ecological health control of population residing within the contaminated Belarusian areas show the threatening growth dynamics of illnesses among the adults and children especially. It also indicates that the areas are contaminated not only with radionuclides but with chemical substances too. All

this taken together brings a long-term post-catastrophe emotional and psychological stress, feeling of mutual anxiety that arouses and lasts for a long time among the population of not only contaminated territories, but also of the whole country. Only 18 per cent of children grown up during the last years are completely normal from the medical point of view. The most spread illnesses are: cancer (thyroid cancer), respiratory diseases, stomach-and-bowel diseases, cardiovascular diseases. Unfortunately, the clinical practice shows that thyroid cancer in case of children is more aggressive than in case of adults and that children having suffered ablation of gland in most cases are slow in their intellectual and physical growth compared to the children of their age. At the same time the growth of cases of such diseases as flue and cataract takes place in kindergartens and health index of pre-school children comes down.

A lack of medical and sport equipment for health recovery aggravates the problem of ill people treatment. The complex prophylactic and sanitary measures in children's pre-school and polyclinic institutions, biomedical intervention for studying the persons residing within the environmentally unfavorable areas must be the supreme line in this situation. It should be noted that the intervention is to be carried out with the agreement of informed adult or with permission of parents (tutors) in case of children under sixteen. The realization of a supposed biomedical scientific study with the intervention into psychophysical state of people (blood sampling, echography, etc) must have the scientific and practical validity and the assessment of potential risk and benefit. The studied persons must be guaranteed with confidentiality of the information obtained. The modern interdisciplinary environmental investigations should attract specialists of different sciences - biology, medicine, ecology, sociology, demography, ethics and philosophy. The bioethics from this point of view can significantly contribute to the evaluation of environment, dynamics and prophylaxis of population health. The continuous biomedical and ecological control of health of population residing within the contaminated territory of Belarus and the resettlement of people into the "clean" areas gives the positive results undoubtedly.

The Republic of Belarus follows the standards of international law in the sphere of health care. New laws of our country ("On Health care" of 1993 with changes and additions of 1998-2000, "On Psychical Assistance and Guarantee of Civil Rights of Citizens in Its Rendering" of 1999) and a new concept of health care evolution developed in 1995 included the main principles of biomedical ethics

recommended by the World Assembly of Health Care. Our country government developed and approved the National Strategy of a Steady Development of the Country that at present is a good base for accepting legal acts as well as national and branch programs including the fixed measures and sources to ensure the steady growth of Belarus, ethic and legal provision of biological variety usage (the concept includes all types of plants, animals, microorganisms and eco-systems).

While analyzing the “Law on Psychiatric Care and Guarantees of Civil Rights in Its Realization” it should be mentioned that the law argues the base items of state regulation in psychiatric care (its voluntary character, right to obtain information, consent for treatment and possibility to reject it, providing it in “the least respective mode”). The forced keeping and treatment of a person in a hospital is allowable only according the court decision that can be appealed by the patient, its representative or by a remedial fund in case of disagreement with the decision. The ethic and legal arguments and standards of psychiatric assistance are added with such arguments and concepts as rationality, sense and moral autonomy of mental patient within the whole sphere of his contact with psychiatric services.

Alongside with formation of legal status of bioethics, its social and ethical arguments and grounds are developed with the use of Christian moral too. The Moscow Eparchy already has the acting Public Church Council on Medical Ethics and the same fund is planned to establish in Belarus. Christianity holds a very stiff line on some bioethical problems: cloning of a human being and his (her) organs (heart in particular), euthanasia, artificial conception and abortion which are considered as an encroachment on life of a future individual. The cloning of separate sells and living tissues of organism, gene-therapy, transplantation of separate organs, study and usage of a number of modern molecular and genetic methods of treatment is considered applicable and useful. A woman aborted pregnancy due to a direct threat to her physical and mental health is not excommunicated, but she has to read special personal repentance penitence established by the priest after confession. The Minsk Eparchy of Belarusian Exarchate has accumulated a significant experience in spreading of bioethical ideas by the Orthodox Congregation of Doctors and a house of charity has been built at the parish of All Saints in Minsk. The spiritual medico-psychological assistance to the hopeless case children is rendered at the Belarusian Children’s Hospice at the oncological centre. Thus, bioethics as a social and cultural phenomenon of our society determines in many respects the cooperation and

mutual enrichment of argumentation of legal and moral senses and sets the guiding lines of biomedical practice and acceptance of management decisions. All this provides the required moral climate in scientific community, medical collectives and adequate moral choices for doctors, biologists, biotechnologists, their intervention into the sphere of living matter, social and legal responsibility for the results of scientific and practical activities.

If the mutual influence of ethical and scientific discourse in the science as a whole and in bioethics in particular is very limited for the "domestic" model of bioethics since its core problematic is mainly the development of moral arguments and principles regulating human behavior in sciences of life, human being, animate nature (bios), than the formation of legal argumentational status of bioethics is still in progress. And though A. Puncare at the beginning of the XX century said that any juridical interference into the problems of scientific investigation would be mistaken and incongruous, many scientists at the end of XX - beginning of XXI century began to appeal to scientific tribunal for adjusting the arbitrary scientific problems and elaborating the code of laws for scientific investigations. Bioethical knowledge fulfils successfully different functions in the process of its functioning including ideological, gnoceological, methodological, axiological ones promoting the development of system of arguments, values, goals and ideals concerning the assessment of life state and its development prospects, moral and legal standards of investigations in biomedical study and technique, modern tendencies of functioning of scientific knowledge of living systems, dialogue and mutual enrichment of scientific and humanitarian discourse, interdisciplinary synthesis as well as improvement of ideological and ethic health of society.

This dynamics is proved to be true by the international scientific conferences ("Ecological Problems of the XXI Century" of 1999, 2000, 2001; "Strategy of Steady Development and Prospects of Civilized Dynamics at the Turn of Centuries" of 1999 - 2003; "Biomedical Ethics: Problems and Prospects" of 2000 - 2005, etc.), the participant of which were scientists, lecturers, doctors, ecologists, clergymen and others. The curriculums of institutes of higher education of our country were added with such courses as "Biomedical Ethics", "Ethics of Ecology", "Bioethics", "The Concept of the Modern Natural Science". The National Coordinating Centre on Biosafety has been established in 1998 at the National Academy of Sciences. The active work is being carried out to establish the Committee on Bioethics at the Ministry of Health. The modern argumentational model of bioethics and development of programs of biomedical investigations in the republic is adapted in the republic to the scientific, socio-

cultural and ideological traditions, to its system of public health care and needs further development.

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