

THE 'SOVEREIGN DECISION' IN THE DISCOURSE OF MEDICAL ETHICS

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Recently, there has been tension in our society because of health-associated problems resulting from at least two factors. First, we are facing collision of neoliberal economics with the traditional ethics of our society. Simplistic understandings of social tendencies typical of our society and processes within the global community provoke a reaction in the form of various conspiracy theories supported by a dualistic ethical approach within our society. In one case, it is based on neoliberal trends and is increasingly manifested through the views of non-governmental organizations. In the other case, it is extremely conservative and tied to the traditional morality. The politics that tends to act within the bounds of the possible goes through both options, creating even more confusion. Another factor, which is no less important, includes blurred connotation and denotation of such notions as 'freedom', 'sovereign', 'sovereign decision', 'human life sacredness', resulting in various misinterpretations. The purpose of this article is to review the occurring dilemmas by disclosing the terms in the historical context. The possible conclusion is that the common global tendency of law harmonization under the influence of neoliberal economics is far from the dream about the Perpetual Peace as seen by Kant two hundred years ago. Regular standards that form the basis of the social ethics occupy less space in the legislation just like the ethics itself, even if used as a corrective measure, with economic logics taking up a larger place. There will be a 'market price' for everything (Kant). In the light of the above, we tried to review vaccination and euthanasia as two very specific and pressing issues.

Key words: medical ethics, sovereign, sovereign decision, 'sacredness of life', vaccination, euthanasia

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«СУВЕРЕННОЕ РЕШЕНИЕ» В ДИСКУРСЕ МЕДИЦИНСКОЙ ЭТИКИ

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В последнее время характерна напряженность в нашем обществе по поводу связанных со здоровьем людей проблем, являющихся следствием как минимум двух факторов. Во-первых, это столкновение нелиберальной экономики с традиционной моралью нашего общества. Упрощенные трактовки социальных тенденций, характерных для нашего общества и процессов внутри мирового сообщества, вызывают реакцию в виде различных конспирологических теорий, которые подкрепляются двойственным моральным подходом внутри нашего общества. В одном случае он полностью основан на нелиберальных течениях и все чаще проявляется через взгляды неправительственных организаций, в другом до крайности консервативен и привязан к традиционной морали. Политика, стремящаяся действовать в пределах возможного, поочередно предпочитает то один вариант, то другой, что создает еще большую путаницу. Другим фактором, не менее важным, является размытость коннотации и денотации таких понятий, как «свобода», «суверен», «суверенное решение», «священность человеческой жизни», из-за чего возникают различные неверные толкования. Цель этой работы — рассмотреть возникающие дилеммы через раскрытие значения этих терминов в историческом контексте. Возможный вывод состоит в том, что общая мировая тенденция гармонизации законодательства под влиянием нелиберальной экономики далека от мечты о Вечном мире, каким его видел Кант двести лет назад. Обычные нормы, составлявшие основу общественной морали, как и сама мораль, занимают все меньше места в законодательстве, даже в качестве корректива, и все больше места занимает экономическая логика. Все будет иметь «рыночную цену» (Кант). В свете вышеизложенного мы попытались рассмотреть вакцинацию и эвтаназию как две очень характерные и актуальные проблемы.

Ключевые слова: медицинская этика, суверен, суверенное решение, «священность жизни», вакцинация, эвтаназия

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According to 'Liberty and Medical Ethics' [1], liberty in medicine is manifested through the struggle with the already existing disease (negative liberty) and struggle for disease prevention (positive liberty). For these liberties to be implemented, a high level of daily consolidated medical knowledge and knowledge from other related fields of science

are required. New hypotheses are generated, confirmed or denied, resulting in a deeper level of expertise. The 'Truth in Medicine' [2] states that truth can be achieved by analyzing the problems associated with (a) space-time continuum, (b) defining the terms 'health' and 'disease'. (c) Linguistic issues related to the definition and connotation of terms in medicine

and, therefore, the use of the International Classification of Diseases, and (d) use of achievements from other fields of science with equipment and other diagnostic tools also belong to the factors that influence gaining of truth in medicine significantly.

Physicians sometimes call the complex way to the truth doubtful, whereas intellectual integrity (ethics) requires to determine the subsequent direction of the search via dilemmas. At such moments, a patient can think that medicine lacks clear decisions that correspond to absolute truth. There is no doubt that not only medicine but also all the biological sciences lack absolute truth. But this does not mean that finding solutions outside professional knowledge can be simple because of that.

So, while discussing truth, we often ignore its possible manifestations on various levels, being both absolute, and probable, informative and polemic. If truth in medicine relates to comprehension of natural processes by humans, then freedom is associated with humans and entire society.

No matter how hard humans and society try to fight the disease, there is no doubt that truth is found in the historical, scientific, political and legal aspects, which constitute the frames of this struggle. In accordance with Greek culture, the context of natural law should be taken into account to make the struggle justifiable (as Aristotle stressed, it is important for humans to always act in the right way [3]).

If laws that determine the rights are a set of standards regulating relations within the society, then natural law should be the closest to human nature. Hobbes defines *lex naturalis* as follows: 'law of Nature, *lex naturalis*, is a precept or general rule found out by reason by which a man is forbidden to do that which is destructive of his life or taketh away the means of preserving the same...' [4]. The law was necessary to prevent a war of all against all. Hobbes states that all people are born equal having 'jus naturale', which is 'the liberty each man hath to use his own power as he will himself for the preservation of his own nature, that is to say, of his own life; and consequently of doing anything which in his own judgment and reason he shall conceive to be the aptest means thereunto'. No authority is above the sovereign. A sovereign is only one with natural rights (*jus naturale*), whereas others renounce it for *lex naturalis* (contract) [5]. Thus, law is a mixture of an attitude to politics, on the one hand, and attitude to freedom as a specific human attribute, on the other hand.

Ancient Greek philosophy views a human being as *zoe* (biological creature) and *bios* (social creature) [6,7]. The life of the biological creature should be subordinate to the social creature. Because of the laws that protect the society, Socrates betrays his biological creature of death (*Crito*) [8]. Plague patients know that destiny is an isolated island or any other isolated space and that they have no right to use the freedom of staying among other people. The political relations within the society clearly suggest that a human is an essential part of the whole, the essence of which — just like the essence of law within the same communities — consists in not violating the social whole and natural processes. Philosophy of Plato both in general and reflected in 'The Republic' and 'The Laws' add to that. In Ancient Rome, which is the cradle of modern law, they followed the ideas as well.

Every modern legal dispute is derived mainly from the Roman law. In the context of this article, three terms and two legal precepts associated with the legal profession in the Roman era are essential. These are the terms 'sovereign', 'sovereign decision', and 'sacred'; the rights of the father over

children; and, finally, a rule (law), which is preserved until now almost in every legislation. It says that judging someone should be solely based on their physical appearance.

While defining the term 'sovereign', it is necessary to understand that human society functions within a complex social system that can't be disrupted. Relations between the system and its destructing elements ensure harmonious functioning of the society. In rare cases, when severe destruction threatens with complete collapse of the system, someone called the 'sovereign' uses emergency measures, which are not an integral part of the law, to restore the legal system. The sovereign has a specific position. It is not part of the legal system; it restores the system without being in it. Its action begins with a sovereign decision, which is an essential part hereof. It is necessary to distinguish between a sovereign decision and free will. The decision belongs to someone above the law as compared to an individual, who is subordinate to the law. Free will is an ability of individuals within the society who obey the law and are not above it.

In the mythological context, it is difficult to differentiate between good and evil as far as the term 'sacred' goes [9]. Evolving from the realities of Pagan Rome to the present day, the term has acquired a new meaning.

Since the establishment of secular states, church legislation that deals with the term 'sacred' has been completely separated from civil legislation. In church legislation, the term 'sacred' is used to denote the highest moral values that should be respected until the end and can't be ignored. It is doubtful that life is announced sacred today even if it is never mentioned in civil legislation determining the destiny of human communities. The term 'indefeasible right' is obviously utilized, but the difference between the indefeasible right for life and life sacredness is huge if the idea of sacredness is taken from today's point of view. Attempts to make it equal result in a naturalistic error, as sacredness is associated with ethical criteria, whereas indefeasibility of life is just a pure fact.

A child's freedom lies in the hands of parents. A father can take decisions for his child, but can't kill the child. The father is solely responsible for the child until adulthood, and this is how parenthood is institutionalized.

The rule stating that judging someone should be solely based on their physical appearance is slightly changed today. The rule admits the possibility of judgement in default, but strict criteria are set in relation to those who can be judged in absentia.

The sovereign decision is historically based on the existence of a person (king, governor) in the society that has the natural right (*zoe*), whereas all the others are an essential part hereof (*bios*). A *sovereign* didn't have to comply with the established legislation; others could not afford the same.

In the era of modernism, a person is perceived as a personality. Since the XV century, spiritual enthusiasm prioritizes a person and human freedom as compared with the natural order of things. The politics, painted in colors of freedom, leads to a series of revolutions (French Revolution, October Revolution). Liberation of a person (as a symbol of both) ultimately ends with totalitarianism and negative experience. Sovereign neoliberal economical option comes on the stage today. Where legislation is adapted to the neoliberal market, the neoliberal economical choice is the driving force of the processes and relations in the society. Something that is of concern is easily removed with manipulation by power, but the authority will neither act, nor operate beyond the law. We are given absolute power, which

acts as sovereign, untouchable and, in the majority of cases, virtual power.

In the countries with no or weak neoliberal tendencies, neoliberal economics imposes its will and regulates relations with the acting laws just like a **sovereign** until the desired order is established. Prof. Miroslav Milovich states in the 'Metaphysics and Politics' [10] that ancient economics of secondary value associated with personal family issues transformed into economics of specific value which is strong enough to determine the politics and, as a consequence, the entire life. In 'Homo Sacre' by Giorgio Agamben [11], two political subjects such as natural life and sovereign (unlimited) power arise from these relations.

These conditions resulted in ethical decline, including global distribution of death camps. **Zoe** is integrated in **Bios**; laws do not punish the natural life any more, but discipline it.

Neither independent medieval cities, nor national states of the 18th and 19th centuries are present. A single economic space exists instead. According to the scientist, the natural life and its sacredness denote integration of a personality into the political life. It is opposed by politics and manipulation with sovereign power. The dream of Kant — and many other reasonable, well-intentioned people — about the shared world legislation is shattered via quiet or rough imposition of interests of the most powerful. Being a global phenomenon, economy affects politics in all spheres. The 'natural' life is squeezed between the pincer movements of the legislation, on the one hand, and human loneliness, on the other hand, with a form of social protection (or an essential part of unlimited power) behind it.

Can such a person exercise sovereign power? No. Neoliberal legislation creates an impression that private ownership constitutes its indefeasible right. According to it, its 'sacred' life is the most valuable thing at its disposal. The right is not taken away but is restricted in a different way: it is a subject of the common economic game, where stronger parties win. The stronger interests are interests of unlimited power behind the mask of interests of a wider community (countries and other organized structures). In the world as it is they say that 'free will exists', but the rules of sovereign powers make you follow them with the threat of ostracism or loneliness. Relations can be restored if the rules set by the sovereign power are followed. The laws applied to a human being as a social creature (**bios**) do not take the human as a sovereign, and, as a consequence, do not accept its sovereign power within the context of taking social decisions. The person is not capable of taking the decisions, because he can't regulate the relations within the society and impose decisions. The person can't be an independent biological creature today (**Zoe**). Thus, sacredness of life or sovereignty of a personality used by the generations of today to build their idea of freedom is an illusion. That's why Agamben is right accepting that there are two subjects on the political arena only. The first one is the ever-present architect of all relations (absolute power) out of social processes, the second one is a natural life with all relations around it, though the second subject can't influence something inside the social life [12]. The natural life (sacredness) is plainly manipulated because it is 'sacred' not due to real holiness, but because economic interests ensure its existence. Connection with pagan Rome should probably be sought here. Your life is sacred for you, but unlimited power can discipline it to the level of labor camps and until the last atom of your strength without any responsibility.

As ethical decisions in medicine are directly associated with the freedom of decision or, as many people believe, with the

independent power of taking decisions, only two aspects can be reviewed in this case: decision to refuse from vaccination, and euthanasia from the point of view of the sovereign decision and in the context of the sovereign power and natural life.

THE SOVEREIGN DECISION AND VACCINATION

Vaccination is a form of struggling with diseases related to our active protection. Essentially, it is the act of positive freedom. For it to be implemented, an extensive social activity is required — from the legislation and provision of funds through the multi-level organization of this activity to the immediate existence. Health education that makes the freedom of decision real and active, without a patient's passive consent (treatment with negative freedom), should be added to that. Refusal from health education in this area causes great damage to vaccination and, as a consequence, to those vaccinated. Being unaware of the precondition, a reason that makes no sense is obtained. This gap is used by various anti-vaccination lobbies that create confusion and less extent of protection, whether we like it or no. What about freedom and sovereign decisions in the context of immunization?

Society (organized community, country, province, or **bios**) shapes behavior in that area. Legitimacy and legality of this procedure are based on conclusions of expert bodies until the law is adopted (legitimacy) and by adoption of the law (legality). Healthy people are welcomed by the society. According to the neoliberal community (the largest population for today), the more working and healthy people we have, the more possibilities of their acquisitions there are. Thus, vaccination is justifiable in this case.

Neoliberals have the same interests as individuals. The interests are expressed through the rational medical measures implemented by the society. How did the anti-vaccination lobby appear then? The sovereign decision to refuse from vaccination results in 'exclusion', i.e. subsequent effect of the community while attempting to participate in further life processes (school, college enrollment, etc.). But how is it possible to recruit supporters who do not vaccinate and significantly reduce the coverage of vaccinated children? It happens due to poor sanitary and educational work, on the one hand, and sense of insecurity of some people, on the other hand. Being aware that many spheres of the social life are manipulated using unlimited power, the people try to trade the natural life reaching the political arena without perspectives. But in the presence of conditions for health communication, the idea of the course of nature, international conspiracy, bad quality of vaccines, toxicity of some components or adverse effects (autism) is losing the battle against the only one ethically correct and rational idea of being vaccinated to become free from diseases.

The true motives of those financing and arranging the movements are not clear. They use personal freedoms as a large training area for interpretation, as it concerns subjective value judgements, trying to make our decision look externalist.

Previously granted parental right to take decisions concerning their children's lives captured in all the legislation, starting from the Roman times, is lost as an argument due to at least two reasons. The first reason concerns real possible death of an ill and unvaccinated child. As sickness and death of the unvaccinated child are statistically more probable than development of adverse effects of the vaccine, fear of adverse effects after vaccination can't be a strong argument

for such a decision. The second reason concerns freedom, because decision of parents is a paternalistic act, i.e., the highest degree of the lack of freedom. It is assigned to the parents until the age of the child's majority to implement it in a socially responsible manner based on the laws of the society and in the child's interests. The interest is estimated by the community and institutionally determined in a number of laws. In Scandinavian countries, parenthood is under constant social supervision. Many parents are deprived of their rights for the smallest misdemeanors or violations of the law.

Finally, let us conclude that it is a free parental will to vaccinate children upon agreement with those who exercise sovereign power. Refusal from a child's vaccination is also a free will with all resulting consequences, implying social ostracism. That is how the decision becomes sovereign. On the other hand, the decision only seems free, actually depriving the child from the freedom in relation to the disease the child should be protected from.

THE SOVEREIGN DECISION AND EUTHANASIA

Unlike vaccination, euthanasia is hardly treatment. It is a specific situation to stop agonies at the end of life. We do not treat patients because death is the outcome of this procedure. No preventive procedures are applied as well. In the technical sense, it can be classified as homicide or — using euphemistic terms — 'mercy killing' or 'assisted suicide'. Homicide is the most serious offence according to any legislation.

Even if qualified as 'assisted suicide', it is necessary to remember that people who assist in suicide are also subject to criminal prosecution. Some countries included procedures — whatever they choose to call them — that welcome homicide of seriously ill patients into their legislation.

Why has the problem of euthanasia become pressing in developed countries lately?

Modern medicine enables effective support of patients' vital functions in the most difficult situations. However, assistance is sometimes provided slow enough resulting in the brain death in some patients, but not physical death. These people do not hope for convalescence, and will soon experience tortures and discomfort they are aware of and want to avoid. The biggest problem is that life is unpredictable and creates numerous situations with candidates for euthanasia becoming available. Thus, for any legislation regulating the area it is difficult to determine the circumstances when the measure can be implemented. Following a well-known scenario, in the lack of a real decision, a commission is convened to solve the issue freely (in consensus, by the vote of a majority...?!). In this case, any meaningful and legally binding action is powerless. Some countries (Netherlands) that permit euthanasia are famous for the high extent of abuse [12]. It is a profitable business in some countries (Swiss). We addressed the issue from different perspectives. Let's discuss the possibility of taking a sovereign euthanasia-related decision here.

To be able to decide on euthanasia, one should be aware of the existing circumstances. If this is not possible (as many severely ill patients have a low level of consciousness), such a decision is taken for that person. It is not about a sovereign decision. But why do we use the term 'sovereign' instead of 'free' then? Because a patient who has taken such a decision is not subject to any law. He will be dead at the time of the act,

and the absentee (dead in this case) is not subject to the law, as he is above the law when the decision is taken. For those who assist in euthanasia the story is different. They can render assistance on a voluntary basis in the lack of law that permits euthanasia and are subject to legal sanctions or fulfilling their professional obligations in the presence of the law that permits euthanasia.

Euthanasia is still illegal in many countries. It should be admitted that during debates about such a law many people will find themselves in an unenviable position. It is the legislation that abolished death penalty in many countries following neoliberal economy known for the euphemistical fight for human rights within the last few decades. By having declared that those whom they are going to exploit have an indefeasible right for life (even killers), they will authorize murder of the innocent and weakest. Having no doubts about political manipulations of unlimited authority, which are based on the principle that recognizes legality of measures, we can witness these laws adopted in the nearest future.

We only need to follow the logics of neoliberal economy and consider two aspects: first, it is expensive to treat these people, and prospect of success is lacking (return of invested funds due to exploitation of natural life); second, a number of expecting donors of organs is increased, meaning that in terms of neo-liberal economic logics, one lost physical life results in one, two or more physical lives;

Some churches display organized opposition to adoption of similar legislation irrespective of the legislation secularity. This can be handled by slow adoption of the law when a number of adopting countries is insignificantly increased. It should be noted that Serbian legislation is about to adopt the law that permits euthanasia with no active encouragement, necessity (euthanasia is not among the pressing issues of our healthcare) or extensive discussion of the problem by the entire society.

The so-called Serbian 'elite' stands for anything that has the slightest air of neoliberalism in the hope of building a modern society. It destructs traditional values deliberately and almost obsequiously. The disputable law with unknowable consequences is going to be adopted in the country with a high level of corruption due to wars, economic crisis and moral crisis in all spheres of the social life, with a shortage of organ donors. Many elements of euthanasia issue that violate ethical norms are not under discussion; the one who commits euthanasia is not held criminally responsible for homicide but is exempted from the legal liability instead. It means that the legislator acts as a sovereign. It is not independent. It is influenced by political manipulations of unlimited power. This is not about unlawful conduct, but about manipulated democratic procedure and participants, who, by eliminating the morality in such cases, raise us to the rank of dependents, people with no past and future, and who will fear for their existence while interacting with medicine.

It can be concluded that the most of those euthanized will undergo the procedure not of their own free will, but by the decision of their relatives. Even some of those who are aware of what they are doing and take decisions on their own do not exercise free will but are subjected to economic or social pressure (sale of organs, saving the family from more medical expenses, etc.). By introducing the legislation that allows euthanasia, the legislator replaces the 'sovereign decision' by decision which is 'based on free will'.

Reference

1. Lukovich MT. Svoboda i meditsinskaya etika. Meditsinskaya etika. 2019; 7(1): 77–83. Russian.
2. Lukovich MT, Majstorovich K, Knezhevich D. Istina v meditsine. Meditsinskaya etika. 2021;4: 42–45. Russian.
3. Aristotel'. Politika. 1283a. Russian.
4. Gobbs T. Leviafan, ili Materiya, forma i sila tserkovnogo i grazhdanskogo gosudarstva. Kul'tura. Belgrad. 1961;111. Russian.
5. Gobbs T. Leviafan ili Materiya, forma i sila tserkvi i grazhdanskogo gosudarstva. Kul'tura. Belgrad. 1961;115. Russian.
6. Gobbs T. Leviafan ili Materiya, forma i sila tserkvi i grazhdanskogo gosudarstva. Kul'tura. Belgrad. 1961;195. Russian.
7. Agamben D. Homo Sacer. Belgrad. Karposh. 2013; 11. Russian.
8. Sokrat. Proizvedeniya Platona, Ion, Pir, Fedr, Zashchita Sokrata, Kriton, Fedon. Belgrad. Dereta. 2002; 161–174. Russian.
9. Agamben D. Homo Sacer. Belgrad. Karposh. 2013; 107 (snoska). Russian.
10. Milovich M. Metafizika i politika. Gradats. Chachak. 2018;18. Russian.
11. Agamben D. Homo Sacer. Belgrad. Karposh. 2013; 263. Russian.
12. Pens G. Klassicheskiye sluchai iz meditsinskoy etiki. Ofitsial'nyy vestnik. Belgrad. 2007; 173–205. Russian.

Литература

1. Лукович М. Т. Свобода и медицинская этика. Медицинская этика. 2019; 7(1): 77–83.
2. Лукович М.Т., Мајсторович К., Кнежевич Д. Истина в медицине. Медицинская этика. 2021;4: 42–45.
3. Аристотель. Политика. 1283а.
4. Гоббс Т. Левиафан, или Материя, форма и сила церковного и гражданского государства. Культура. Белград. 1961;111.
5. Гоббс Т. Левиафан или Материя, форма и сила церкви и гражданского государства. Культура. Белград. 1961;115.
6. Гоббс Т. Левиафан или Материя, форма и сила церкви и гражданского государства. Культура. Белград. 1961;195.
7. Агамбен Д. Homo Sacer. Белград. Карпош. 2013; 11.
8. Сократ. Произведения Платона, Ион, Пир, Федр, Защита Сократа, Критон, Федон. Белград. Дерета. 2002; 161–174.
9. Агамбен Д. Homo Sacer. Белград. Карпош. 2013; 107 (сноска).
10. Милович М. Метафизика и политика. Градац. Чачак. 2018;18.
11. Агамбен Д. Homo Sacer. Белград. Карпош. 2013; 263.
12. Пенс Г. Классические случаи из медицинской этики. Официальный вестник. Белград. 2007; 173–205.