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Equity in Medical Care: An Aristotelian Defense of Imperfect Rules—and Bending Them

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To the chagrin of some people, and the relief of most, doctors are not robots. As important as technological and bureaucratic systems have become for many aspects of contemporary medical practice, the bedrock of optimal care remains the clinical judgment of individual doctors. Good clinical judgment made possible by rigorous training and experience cannot be programmed. Instead, it constantly arises in an epistemological space between universals and particulars. On the one hand, rules and regulations, procedures, and technologies all provide the systematic structures that ensure stable medical practice. On the other hand, well-trained practitioners are constantly assessing the particular details that define any actual clinical situation. Clinical judgment is the cultivated capacity to work between these poles, to bring them together in the determination of appropriate decisions—appropriate because they join the general guidance of systems with the particulars of specific patients and clinical situations.

To ensure the justice of clinical judgment, and to make sure that systems do not harm people who need medical care, it is necessary to allow room to adjust the fit between universal and particular according to the judgment of the practitioner. The concept of "equity," originally explicated by Aristotle in the *Nicomachean Ethics*, accounts for this adjustment [1]. Equity is especially important because it recognizes that the justice of systems of medical care depends, ultimately, on the individual moral agency of health care professionals.

When all goes well, medical care proceeds more or less seamlessly in the space between the general and the particular, so much so that doctors and other caregivers are not aware of the unifying activity of their practical judgment, nor do they question the justice of their activity. Tension is often present, however, and moments of crisis arise wherein a caregiver seems forced to choose between two conflicting courses of action, one defined by adherence to the strict requirements of a system, the other defined by the immediate and particular medical circumstances. In such conflicts adherence to an impersonal system often appears to entail unjust treatment of an actual person in need, so that the system itself appears unjust. Many worry, for instance, that strict enforcement of work hour rules requires residents to abandon their patients. The concept of equity helps to illuminate how even systems that are just nevertheless sometimes require correction to achieve equity. Aristotle explains: "What causes the problem is that the equitable is not just in the legal sense of 'just' but as a corrective of what is legally just. The reason is that all law is universal, but

there are some things about which it is not possible to speak correctly in universal terms" [2].

Aristotle's basic point is that to function properly any system must generalize. But generalization entails the admission that systems cannot prescribe in advance a correct course of action for every possible contingency. A truly perfect system, in this sense, would be an absurdity, as it would require so much specification of possible contingencies that the system itself would become unwieldy and practically unthinkable. What Aristotle calls "legally just" can therefore be interpreted in contemporary terms as "procedurally just." A health care system is procedurally just when it generally facilitates the provision of appropriate and fair medical care.

Following Aristotle's account of equity, it is a mistake to assume that whenever a practitioner is caught between a general requirement and a particular circumstance, the system in question at the moment must, by definition, be unfair. Even the most "procedurally just" system sometimes will not fit an actual clinical situation. The requirement for informed consent, for example, sometimes seems to conflict with medical necessity, so that confusion ensues about how to proceed because it is not clear whether adherence to one guiding rule—act to save a person's life—requires breaking a different rule—treatment without consent is battery. Equity in such situations does not require that an actor "break" a rule or act "against" a system. Instead Aristotle introduces the image of a special "rule" necessary to adjust the requirements of ordinary rules:

> And this is the very nature of the equitable, a rectification of law where law falls short by reason of its universality. There are some things about which it is impossible to enact a law, so that a special decree is required. For where a thing is indefinite, the rule by which it is measured is also indefinite…. Just as this rule is not rigid but shifts with the contour of the stone, so a decree is adapted to a given situation [3].

Equity, in effect, improvises a rule so specific that it only holds for the particular instance of its application. Equity pushes a system forward where it otherwise falls short. Equitable action thus completes or perfects the application of general directives where they conflict or do not reach. In cases where a person who seems to lack decisional capacity refuses life-saving intervention, doctors typically improvise a way to construe consent that both facilitates good care and honors the requirement to obtain informed consent.

Distinguishing the Imperfect from the Unjust

A crucial benefit of Aristotle's account for contemporary medical ethics is that it distinguishes procedurally just systems that are imperfectly able to guide decision making in a particular situation from systems that are in fact unjust. Put another way, Aristotle's account of equity teaches that there is a profound difference between "shifting" a rule or working at the margins of a system and breaking a rule or acting against a system. To provide optimal medical care, doctors and other health care

providers therefore need to be able to wield the contemporary equivalent of an indefinite rule. They must retain the freedom to individualize the care they provide according to the unique details of each clinical situation.

This is not to say that *every* medical situation is so unique that it defies description within a system, nor is it to say that such situations are exceptional. Doctors therefore must reflect upon the difference between "shifting" a rule to achieve a good end that is not opposed to the system of general care and breaking a rule because the system itself cannot accommodate good care. In the former case the practitioner can claim in good conscience that her actions are equitable and ultimately conform to the system whose rules they shift. In the latter case, by contrast, the practitioner in good conscience must accept that she is breaking a rule and also accept responsibility for her actions accordingly. Many doctors, for example, choose to share medical information with immediate family members of persons receiving emergency medical care, in violation of HIPAA (Health Insurance Portability and Accountability Act) regulations. In doing so they break a federal law and must accept the unlikely but real possibility that when they breach the confidentiality of their patients they can face legal consequences.

A further implication of Aristotle's description of equity is that, rather than attempt to determine the justice of a system based on whether it conflicts sometimes with the requirements of a particular circumstance, one should attempt to determine whether the system significantly impedes equitable improvisations. Applied in this way, the concept of equity helps define realistic expectations for what a system can justly accomplish and, at the same time, recognizes that heath care professionals are empowered to exercise their own practical judgment in providing just and fair medical care. The imperfection of a system when rigidly applied to a particular case is therefore not a cause for distress, but rather celebration, since even the most just system possible depends for its perfection on the moral freedom of discerning individuals.

At their best, good systems allow space for the practical judgment of health care professionals to achieve a kind of perfection of justice in the particular actions of their daily practice. At their worst, they constrain persons from acting equitably. Conflict between the requirements of rules and particular situations is not itself an indication that a system has gone wrong. Instead, a truly "bad" system is one that does not allow practitioners to make adjustments—i.e., to shift rules—in order to attain equitable ends. To optimize medical care it is not necessary to seek to eliminate, in advance, the possibility of conflict between general and particular requirements. Such an attempt would itself be likely to institute a rigid general rule that would then generate further conflict. Rather than regard instances of apparent conflict between systematic and particular demands as failures of medical care, it makes sense to regard them as opportunities for equitable action.

When evidence accumulates that a system unduly constrains adjustments of equity, and so unduly constrains its own reformation, then there is reason to consider the

system as actually unjust. In those instances where equity is not possible, when the limits of a system obstruct good practice, then the responsibility of doctors is not to keep breaking the rules that define the system, but to seek to modify the system. If enough doctors repeatedly feel compelled to disregard certain aspects of HIPAA, then an appropriate implication is to explore whether the legislation itself is due for change.

Should it ever become possible to design and implement a perfectly just system of rules that comprehends every possible individual clinical occurrence, then indeed robots could become doctors, or doctors, robots. But in the meantime the possibility of optimal medical care will remain a work in progress, achieved in the equitable exercise of clinical judgment by well-trained and conscientious doctors.

References

1. Aristotle. *Nicomachean Ethics*. Martin Ostwald, tr. Upper Saddle River, NJ: Prentice Hall; 1999:141-142.
2. Aristotle, 141.
3. Aristotle, 142.

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