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Medical Ethics: Epikeia and Proportionality

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1. Short Communication

The coronavirus crisis has brought special attention to medical ethics. Advances in medicine, which give rise to new ethical dilemmas, also argue for a stronger emphasis on medical ethics. Examples include organ transplantation with the question, e.g. of the criteria for death, euthanasia, preimplantation or prenatal diagnostics, human genetics and the discussion about the “informed consensus”. Multi-disciplinary expertise (philosophy, research, clinical practice, legislation, politics, etc.) is essential for an ethical consideration of these topics¹.

The ethical framework for medical ethics is formed by conventions (e.g., the Universal Declaration of Human Rights of the United Nations or the Convention on the Rights of the Child), medical oaths, e.g. (the Hippocratic Oath), codes (e.g., the Nuremberg Code), declarations (e.g., the WMA Declarations of Geneva or Helsinki) and principles (e.g., the four principles of Beauchamp and Childress). These have almost timeless and general validity but can only cover individual cases to a limited extent. From a clinical perspective, medical guidelines appear to be more appropriate. They represent the generally accepted and binding standards of the medical-technical ‘state of the art,’ but they often do not do justice to medical-ethical aspects. However, general experience shows that the individual case frequently constitutes the exception to the norm and rule. From a medical-ethical point of view, however, this often requires a middle way between pure medical ethics and strict guideline medicine. This ‘golden’ middle way leads to the path of epikeia and questions about the medical tradition’s moral and ethical norms.

Responsibility, hope and trust are concepts that have so far been given too little importance in the context of medical ethics². Two other concepts might also be helpful for decisions in medicine: Epikeia and Proportionality.

2. Epikeia

The term epikeia (Greek: ἐπιείκεια, epieikeia, Latin: aequitas = equity, German: Billigkeit)³ refers to the proper behavior of a person, which proceeds according to the principle of reasonableness, appropriateness and equity in dealing with positive legal norms⁴. It is the ability to recognize the dominant concerns of a legal system and to implement them beyond the strict letter of the law into action⁵. The term epikeia originates mainly from the legal context as the interpretation of the law in a particular case, but was already important in pre-Socratic philosophy and especially in Aristotle.

However, to arrive at sustainable and consensual ethical decisions, it is helpful to act following the so-called “epikeia” if the special aspects of the various ethical models are not sufficient in individual cases to behave ethically well under challenging situations. The same also applies when overarching norms cannot be adhered to, e.g., in cases for which no laws exist or in specific situations that the legislator could not have foreseen.

Medical decisions must be able to take complete account of individual situations and personal circumstances. Such decisions require a broad margin of discretion⁶. A doctor acts following the principle of epikeia when he recognizes that a regulation or law, a guideline, does not correspond to the circumstances of his

situation and therefore does not follow it and decides to do what is right in the situation.

According to Aristotle, it took 1.500 years before Thomas Aquinas revisited the topic of the *epikeia*, which was then incorporated into Catholic moral theology and canon law.

In medical ethics, the *epikeia* is becoming increasingly important due to the growing use of technology and the rise of medical treatment based on feasibility, coupled with a decline in personalized care. In addition, there are borderline situations, especially at the beginning and end of life, that often cannot be resolved only with medical expertise⁷.

When it comes to making morally responsible, person-centered decisions, the individual doctor acts in the sense of the *epikeia* as a principle of personal ethical decision-making in line with demand, following the path of the “golden mean” proposed by Aristotle⁸. He decides between the excess of polypragmasia (of what is feasible) and the lack of a (minimal) medicine that is rationed, for example for cost reasons. However, refraining from expanding diagnostics and therapy, for example, in hopeless situations, can be in the patient’s best interest. Thus, the *epikeia* becomes a cardinal virtue of medicine.

The *epikeia* is based on the freedom and equality of all people. It is linked to the fundamental understanding of inalienable individual freedom of choice and, thus personal responsibility. Freedom of conscience and, occasionally, civil courage also come into play. The consequence of responsibility is that the person taking action is accountable for the foreseeable consequences of their actions⁹.

3. The Principle of Proportionality

Generally speaking, the principle of proportionality means that legal acts must not go beyond what is appropriate and necessary to achieve their intended objective. Accordingly, costs and bureaucratic effort must be kept to a minimum. This creates a system that favors the smallest possible intervention¹⁰.

In medicine, the two principles of beneficence and non-maleficence often give rise to the problem of deciding between harm and benefit. This problem also shows the ambivalence of every human action when the respective good or benefit shapes a decision, but at the same time evil and damage are also caused and allowed¹¹.

After the Covid pandemic, many questions arise. Was it right or proportionate to close the schools and let the children learn online alone at home? Were the curfews proportionate? Was it authorized to keep children away from playgrounds? From a medical point of view, questions arise, such as whether it was right to prefer certain people for vaccinations (e.g., elderly people) or to make vaccination compulsory for medical staff or teachers.

A study at the Max Planck Institute for Human Development analyzed the effectiveness of early Covid-19 measures such as lockdowns and other non-pharmaceutical interventions. The results may shed light on the right balance of measures to deal with future pandemics¹².

The question of triage also arose. Due to a lack of sufficient resources, e.g., when only one ventilator still was available, doctors had to decide which patients they should treat and which they should not, i.e., they were faced with a dilemma because they could not save all patients¹³.

Another question was: should doctors and nurses act heroically and, for example, perform resuscitation on a maximally ventilated COVID19-positive patient in cardiac arrest with acute respiratory distress syndrome and expose themselves to infection because relatives demand that ‘everything be done’? “Proportionality can provide a means to redistribute burdens of care more equitably, so one does not need to be a hero to practice ethically. Proportionality in an emergency context that goes beyond a focus on the individual patient can also inform decisions about rationing intensive care and allocation of institutional resources devoted to palliative care¹⁴.”

This example shows where the principle of proportionality becomes important. A decision is proportionate if the benefit outweighs the harm. This can be the case if, for example, a cytostatic treatment leads to significant side effects but is carried out with consent because it is hoped that it will combat a malignant tumor. However, the decision can also be made in reverse if necessary. A more straightforward example is a house fire. Is it appropriate for the fire brigade to extinguish the fire with water but destroy the entire house?

This question of the risk-to-benefit ratio also arises for every surgical procedure and every individual patient. The decision should consider the patient’s autonomy and, if they can no longer make decisions, their relatives or health care representative.

Proportionality also is an important addition for ethical decision-making between benefit and harm for the patient (“Are we doing more harm than is necessary?”). It contributes to the well-being of medical staff and may help choose between curative and palliative medicine.

“The principles of bioethics (autonomy, beneficence, non-maleficence and justice)¹⁵ are important to include in ethical decisions, but each one alone presents little guidance for how to weigh or balance principles or how to account for harm¹⁶.”

4. Summary

Conventions, human and children’s rights, declarations and oaths (e.g., the Hippocratic Oath) provide a generally applicable framework for medical-ethical decisions. In a clinical context, guidelines appear to be more appropriate, as they consider typically recognized medical and technical standards. However, to do justice to the individual case and the individual patient, the principles of *epikeia* and proportionality should be applied. The term *epikeia* comes from the philosophy of Aristotle and has found its way into the moral theology of the Catholic Church. In the medical context, it enables an ethical procedure according to the rules of reasonableness and fairness, considering the needs of the individual person or patient. The principle of proportionality is essential for making ethical decisions and distinguishing between the principles of beneficence and non-maleficence or not doing more harm than is necessary.

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