

Ethical deliberation at the service of humanitarian action

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From the morals of the action that presided over humanitarian impulse to the ethical deliberation that provides a framework for the moral dilemmas it increasingly gives rise to, there is but one step to be taken. Pierre Le Coz suggests that we adopt a methodical approach that could bridge the gap between one and the other. Based on philosophy and building on already advanced work in the medical field, the author proposes to raise the awareness of humanitarian actors to this rising concern – ethics. It is up to the humanitarians themselves to cover the rest of the way, by reducing it to their reality and their constraints.

Until recently, humanitarian action was closely associated with emergency in the collective imagination. Insofar as ethical reflection requires hindsight and time for deliberation, it did not seem immediately suitable for action undertaken amidst the chaos of a war or natural disaster. While this mode of operation evidently carries on under dramatic circumstances, the humanitarian approach is nevertheless increasingly meant to last over time and even chronicity. It consequently involves taking the time to work together in order to clarify moral dilemmas. This is increasingly the case as the changes that occur globally affect humanitarian action, which increasingly finds itself faced with the challenges of unprecedented situations¹. From a philosophical point of view, it would appear that for lack of fast and significant developments in international law, humanitarian organisations should be able to agree on “common guidelines”. To cope with the situations they encounter, they would have to set an order of priority when it proves impossible to realise all the values at the same time. They would need to agree on a method aimed at giving structure to the deliberation that presides over the action. We are hereby submitting a few key concepts of ethical literature to the appreciation of field workers, who will know better than us how to adapt them to the requirements of their environment.

Attempt at defining the approach

Outside the strict field of deontology, the ethical approach appears to be a suspension of action, a moment of hindsight dedicated to reflection. Deliberation is not an end in itself however: it must lead to choices. Thus, to alleviate immediate suffering, it is not uncommon for humanitarians to be forced to bypass the consent of those in emergency situations. In other cases, in order to be “beneficial” in the present, they run the risk of generating adverse effects in the future. Similarly, it is not always possible for them to live up to the imperative of justice that demands universal assistance to the injured: they must sometimes resolve – like other emergency

¹ Jean-François Mattei and Virginie Troit, « La transition humanitaire », *médecine/sciences*, no. 32, 2016, p. 211-215.

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services – to undertake the painful sorting out of victims. At times, the relationships of a humanitarian organisation with local political authorities require choices to be made that involve tension between values that cannot be implemented simultaneously: helping the people can thus lead to silence the abuses of those in power in order to avoid their attempts at obstruction. Similarly, in the name of respect for equality in dignity, humanitarian organisations come to take the risk of harming innocent people if the person they have helped to recover takes his weapon again to kill his opponents.

In short, ethics is a questioning in which our thought process engages when confronted with a moral situation in which different competing decisions, each of them with its own legitimacy, clash with one another. In this case, deontology remains as necessary as ever, but it is no longer sufficient. It must be backed by ethical deliberation.

Formalisation of the ethical approach

So as not to be left to improvisation, it is important for the ethical approach to be structured using conceptual and methodological tools. Humanitarian ethics are not starting from nothing because the formalisation of dilemmas has already taken place in other contexts over the past decades. Historically, the field of medicine is where the first attempts at building a methodology emerged. The development of ethics started in the United States during the 1970s, following controversies that moved public opinion. Thus, twenty years after the enactment of the Nuremberg Code in 1946, the *New England Journal of Medicine* published an article describing 22 experiments performed in the United States on incapacitated persons (senile elderly individuals, residents of mental institutions, newborns, etc.)². Shortly thereafter, on July 26, 1972, a scandal broke out after the revelation in the *New York Times* of a study by American researchers on syphilis, conducted among African-Americans who had been knowingly denied penicillin for experimental purposes. The aim for the investigators was to observe the effects of syphilis by having a control group. Misled about the nature of their disease, these people were sacrificed as guinea pigs on the altar of an allegedly higher purpose: the advancement of knowledge³.

The last decades of the 20th century saw an increase in the protest against abuses perpetrated by medical authority and an opening to civil society spurred by associative activism and citizen initiatives that resulted in meetings and forum discussions with the general public. Ethics developed in France after the contaminated blood crisis in the late 1980s and have continued to this day, resulting in significant legislative changes (the last of which establishes the right for end of life patients to be put to sleep until they die⁴).

Internationally, over the same period, one saw the rise of a culture of autonomy and a simultaneous decline in the tradition of paternalism⁵. Among the publications that bear witness to this change in culture, it is worth noting the work of two American philosophers, Tom Beauchamp and John Childress, *Principles of Biomedical Ethics*, which identifies four ethical principles aimed at reducing abuses of power: autonomy, beneficence, non-maleficence and justice⁶. These pillars of ethics echo fundamental moral expectations that are unique to every

² Henry K. Beecher, "Ethics and Clinical Research", *New England Journal of Medicine*, no. 274, 1966, p. 1354-1360.

³ Gérard Tilles, "Pénicilline et syphilis: les sacrifiés de l'Alabama", *La Recherche*, no. 466, 2012, p. 108.

⁴ Law no. 2016-41 from January 26, 2016 for the modernisation of the French healthcare system.

⁵ Jean-François Mattei, *L'humanitaire à l'épreuve de l'éthique, Les liens qui libèrent*, Paris, 2014.

⁶ Tom L. Beauchamp and James F. Childress, *Principles of Biomedical Ethics*, Oxford University Press, 7th edition, 2013.

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human being. Apart from psychological and health needs, everybody expects their own aspirations to be met in terms of recognition of their autonomy and respect for their dignity.

It would therefore be wrong to believe that everyone has “their” values, as if values had no universal reach, as if they were subjective and personal. When expressing our own values, we discover that they are shared by others. There are values common to all peoples, recognised and debated worldwide, and which can be formalised through these four principles: respect for autonomy, beneficence, non-maleficence, justice. As universal pillars, they provide a methodological framework that allows progress in resolving moral dilemmas.

Autonomy: involving stakeholders in the decision-making process

Autonomy refers to the possibility of aligning one’s acts with one’s thought. It includes a rational self-regulatory dimension. It is not, in fact, a blind or arbitrary freedom but a thoughtful and reasoned orientation. A decision is free when it is debated and supported by reliable and comprehensive information. There is no free choice unless it is informed. This is why the principle of autonomy implies that stakeholders be fully informed. Respect for freedom of choice is logically realised through mutual trust. Care should be taken to ensure that the information has been understood by creating an interactive dialogue during which all questions can be asked, despite the frequent communication difficulties linked to foreign languages and different beliefs.

Allowing each and everyone to be an actor of their decisions and to choose their reasons for living is to give them the opportunity to be masters of their own destiny. Respecting autonomy is to take the intellectual abilities of one’s interlocutor seriously, whether the latter is an individual or a group. It implies recognising that interlocutor as fit to take part in the decision-making process, and therefore to become a partner of that process. It should be added that autonomy cannot be reduced to consent. While consent consists in accepting or rejecting a proposal, autonomy incorporates an element of personal initiative. “Autonomy” means “self-determination”: it is me (*autos*: “me”) who is behind the approach that will be adopted to improve my situation. Ultimately, it will be up to me to decide on the opportunity of a solution, because no one knows what I need better than I. Respect for autonomy involves the possibility to refuse assistance.

Beneficence and non-maleficence

Beneficence evokes the aim for well-being and for improving the quality of life. It translates into a fraternal concern to avoid as much suffering for as many people as possible. Man does not aspire solely to respect for his autonomy. He is not simply a rational being anxious to assert his independence and his way of thinking. He is also subject to episodes of weakness and suffering that arouse in him the need to be helped in situations of vulnerability. Beneficence is a solicitude that is committed to providing help and support to people who are not self-sufficient.

Performing a good deed in favour of another person is a perilous undertaking because one has to make sure that the good as one sees it coincides with the good as the other perceives it. There is always the risk of falling into a stifling paternalism on the grounds of doing one’s good. Ideally, the recipients of aid should be able to express what their good is but, in actual fact, it is not always possible to gather their opinion on the subject. When they are not able to express it (either because a child is the recipient, or because the urgency requires good to be done without seeking the opinion of the person concerned), one can only presume what their good is in view of their suffering.

Non-maleficence is the negative version of the principle of beneficence. It is a value that enjoins us to prevent any harm from befalling both the individual and the group. On that basis, a situation should not be made worse on the grounds of improving it, nor should the group be undermined by trying to avoid causing harm to an individual. Non-maleficence requires one to prevent harm from being caused to others, and to spare them from any suffering that does not make sense for them. It involves helping them with-out putting them down, assisting them without humiliating them, rescuing them while not abandoning them thereafter.

Justice

It consists in giving equal consideration to everyone. One life equals another life. One must help all people, regardless of their characteristics (age, gender, etc.) or their cultural and religious backgrounds. As a synonym of impartiality, this value forbids one from favouring some to the detriment of others in the name of private interests or subjective preferences: “To each according to his needs”.

Justice requires the actors involved to take into account a double imperative of equality and equity, two values that the restriction of budgetary resources can place in a situation of tension. Where it is not possible to be fair in the sense of equality, one confines oneself to the second sense of justice, which is equity. For example, every man has the right of equal access to the conditions of a decent life, but a rational and optimised distribution of scarce resources will induce priorities in favour of those who have a better life expectancy, in the interest of the group. When few resources are available, it becomes crucial to know how they will be used. Equity can lead to making tragic choices.

Identifying the emotions involved

The second step of the ethics method-ology consists in identifying the emotions through which we access the value of the principles of ethics. There are no ethics without emotions because the latter give us access to values⁷.

Thus, respect reminds us of the importance we attach to the autonomy of individuals; it lets us perceive a greatness in man that compels us to step aside so as to let it exist. In concrete terms, respect translates as the desire to listen to the individuals who inspire this emotion in us, to share with them a moment of dialogue, in a climate of loyalty and authenticity. Even if we are under time constraints, because of the emotion stemming from the respect we feel for them, we sense that we have a duty to devote time to listen to and communicate with them. Respect inclines us to invite them to take part in the decision that paves the way for their future.

Compassion is an emotional involvement in the torments of others that must be distinguished from maudlin pity or commiseration. It is neither the chain transmission of suffering nor emotional contagion, but the most natural emotional response to a perceived distress. Few indeed are those who feel no compassion when faced with the obvious suffering of one of their kind. The experience of compassion triggered by the perception of suffering in others inclines one to perform a good deed in their favour, to use all possible means to ease their pain and

⁷ Pierre Le Coz, *Le gouvernement des émotions*, Albin Michel, 2014.

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reawaken their lust for life. In that sense, the ethical virtue of compassion is to make us sensitive to the value of the principle of beneficence and to give us the desire to realise it.

Besides the respect and compassion that reactivate in us the importance we place on the principles of autonomy and beneficence, we need to experience an emotion of dread to be sensitive to the value of the principle of non-maleficence. A decision must be imbued with an element of apprehension to avoid the pitfall of overconfidence. Dread is neither the fear nor the terror that paralyse action instead of galvanising it. While fear brings us face to face with an immediate danger, dread is oriented towards the future: it points to the imagination of what could happen, whether a hazard or a catastrophic turn of events. The emotion of dread protects us from a blind optimism that would push us to believe a little hastily that “everything will be alright” and to reassure our interlocutor far too lightly. Casualness is the main source of our mistakes. Dread protects us from it.

When we are the theatre of emotions that lead us to take opposite decisions, we experience a diffuse anxiety. This is an alarm system that tells us that we are faced with a problem for which no satisfactory solution has been found and that we must therefore continue to deliberate. In some situations, humanitarian actors do not know what conduct would be the most responsible, or the best suited to the context. How to position oneself vis-à-vis the populations concerned? We are alerted to a conflict between our values and the inability to implement them simultaneously. We then have to gather around a table and put our heads together. This brings us to the third step which consists in a discussion aimed at identifying the values at stake and finding the best way to prioritise them.

Implementing the rules for the ethics of discussion

The very current case related to the reception of migrants in Europe illustrates the dilemma for which anxiety is the indicator. On the one hand, the duty of beneficence enjoins us to do a good deed for people in distress who are fleeing their country to save their lives and that of their relatives. On the other, the imperative of justice demands that scarce resources be distributed among all those in need. We are in the presence of a dilemma where action forces a decision that implies choosing the least damaging solution. To find this solution by default, one must organise a collegial deliberation and open oneself to the view of others. Responsibility lies in a way of being within the group and is translated through the rules for the ethics of discussion, which everyone must submit to in order to achieve the most balanced solution. The conflict of values called “dilemma” cannot be solved arbitrarily or dogmatically (“it’s like that, and that’s the way it is!”) because our democratic culture requires each of us to listen to the arguments presented by others, and to make the effort of trying to convince them that in our opinion, our argument is better than theirs.

But if we want our exchanges to be truly successful, we must accept to yield to constraints of emotional correction. Compliance with the rules helps promote respect for individuals. The third step formulates a number of rules from which the most balanced and the most consensual solution to the issue raised will emerge. A session chairman must be appointed since there can be no ethical debate without any organisation. He/She will at first recall the rules to be observed so as to maximise the chances of achieving the most balanced solution:

– Respect the equity of speaking time. Everyone must make the effort of correcting any tendency to monopolise the exchange or, conversely, to hang back. The chairman must strive to restrict

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biases associated with this locutionary disparity by encouraging some to speak and refraining others from doing so.

– Treat everyone equally in regard to competences. All participants must be able to express their point of view, regardless of their socio-economic status, hierarchical function, etc. In principle, no position is more valuable than another. The word of a member is worth no more or no less than that of another, and all are perceived by others as a bearer of morality and good will. Ethics is not considered an expertise. The only competence required is the ability to present one's arguments on a moral subject.

– Show respect when others are speaking by refraining from using any form of destabilisation (blackmail, threat of “retaliation”, untimely chatter, sniggering, irony, cutting off, etc.). A point of view can be confirmed only if it is exposed to the risk of being disproved by a different argument. The obligation for everyone to accept to undergo criticism symmetrically implies that objections be formulated using oratorical precautions and no excess.

– Present one's arguments rationally. One cannot lay claim to evidence nor stick to the first emotion felt. Emotion is the starting point for any ethical reflection, but it can be excessive at times and should be counterbalanced by other emotions. Everyone should take the time to formalise and back up their opinion if they want it to be shareable by others. This means not relying on paralognism such as the use of an example or a personal testimony as “proof”, not resorting to an argument based on authority (“X or Y said”, “it is written that”...) and lastly not ruling too quickly in favour of the consensual position. The fact that the majority agrees with it is an indication of the legitimacy of a solution but it is not equivalent to proof. The group is not necessarily always right and that is why it is acceptable for one of the discussants to act as the “devil's advocate”, when necessary, if indeed he/she considers that the consensus was imposed prematurely.

– Be willing to change perspective. All discussants must show enough open-mindedness to be ready to rally behind a position better documented or backed by better arguments than their own. It is their duty to change their point of view if, after gaining further insight, they consider their initial position as far too unilateral. This rule implies not placing oneself in a position that would require one to reverse one's judgement due to adopting an excessively unequivocal position.

Structured around these five procedural rules, collective deliberation aims to highlight elements of convergence and to come to recommendations generally accepted by the majority. It is up to the session chairman to ensure that the discussion group has found a fair balance between the views expressed. It is also up to him/her to know how to end the discussion and to make a decision by opting for the solution he/she sees taking shape.

It may be that the wrong direction is taken; only time will tell. But the risk of making an erroneous decision should not be used as an excuse to delay that decision because a deliberation that lasts more time than necessary is only the alibi of “irresolution” (Descartes). One must resolve to accept some element of arbitrariness, given that in action, we are often reduced to choosing between absolute and relative arbitrariness. The key is that the decision should be able to retrospectively lay claim to a valid justification.

Once the decision is made, no one should call it into question or hinder it because the original consensus is that a decision must be made and respected, even if it may not be the best option in one's view. It does not prejudice the future since the decision that results from an ethical

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deliberation is not a court decision, nor does it set a precedent. Each dilemma must be analysed on a case-by-case basis.

In conclusion, when we respect the choice of an individual or population, when we are concerned about improving their quality of life while being careful not to cause them harm in order to do good, our behaviour reflects our commitment to fundamental values: respect for autonomy, beneficence, non-maleficence and justice. In practice however, it is not always possible to embody these values simultaneously. Ethics is the reflection aroused by a tension between our values⁸. Deliberation is the moment when we reflect on the best way to prioritise them. To organise it, it must follow at least three steps: recall the principles, identify the emotions involved and define the rules of discussion to solve the dilemmas.

This method should retain some flexibility. Ethical principles are ideals that one can only partially realise because contexts are changeable, people singular and stories unique. They are not *standards* to be applied but rather *points of reference* that help guide reflection and measure the remoteness of a practice in relation to ethics. This means that ethical principles must be contextualised according to local specificities and put into perspective with the standards of societies: moral prohibitions, applicable normative texts, religious references, etc. It is not the men who are at the service of the principles, but the principles that are at the service of man.

Translated from the French by Marc Duc

Biography • Pierre Le Coz

University professor of philosophy, he teaches medical ethics and moral philosophy at the Faculty of Medicine in Marseille, where he is Director of the Department of Human Sciences and Head of the Masters Degree “Ethics, Sciences, Health and Society” (UMR 7268 ADÉS [Anthropologie bio-culturelle, Droit, Éthique & Santé]/EFS/CNRS, Espace Éthique Méditerranéen). He was a member of the French National Consultative Ethics Committee (CCNE) for nine years, four of which as vice president (2008-2012). He currently chairs the Committee for ethical standards and prevention of conflicts of interests of the ANSES (French Agency for Food, Environmental and Occupational Health & Safety). He has published several books including *L’empire des coaches, une nouvelle forme de contrôle social* (Albin Michel, 2006), *Le petit traité de la décision médicale* (Seuil, 2007) and *Le gouvernement des émotions* (Albin Michel, 2014).

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⁸ Hugo Slim, *Humanitarian Ethics. A Guide to the Morality of Aid in War and Disaster*, Hurst Publishers, 2014.