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Editorial Note: Peace through Bioethics - Dialogue on Consensus and Policy-making

The first three issues of *EJAIB* for 2012 include papers from the Fifth UNESCO-Kumamoto University Bioethics Roundtable, held 3-5 December 2011 in Japan. The January issue focuses on a variety of papers on bioethics and peace, whereas the March issue includes a number of papers on advance directives, and medical ethics, and the May issue on environmental ethics topics. There are also some papers submitted to *EJAIB* on related topics which are included in these volumes.

The concept of bioethics taken in these papers is broad, including peace between peoples, and with nature. The authors share a wide range of experiences, and explore ways that ethical principles can be applied to dialogue in the pursuit of a good life for all. Readers are invited to share experiences, from theoretical as well as practical aspects of peace. There is also an active Youth Peace Ambassador programme involving UNESCO, Eubios Ethics Institute, and other parties and several hundred young people around the world.

Please renew your Asian Bioethics Association subscriptions for 2012, and submit abstracts to the 13th Asian Bioethics Conference, 27-31 August 2012 in Kuala Lumpur, Malaysia.

Bioethics and Environmental Ethics in the Age of Co-Disaster

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The Great East Japan Earthquake

On 11 March 2011 eastern Japan was struck by an extremely strong earthquake of magnitude 9. This area had been known as a quake-prone area, and people tried

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to protect against earthquakes, however, the scale of the earthquake was far beyond expectation. It caused not only a huge tsunami with the loss of nearly twenty thousand lives, but also the serious atomic-power accident at Fukushima No.1 nuclear power plant that lead to the serious radioactive leak and nuclear meltdowns in three reactors.

The Great East Japan Earthquake revealed problems in far-reaching fields, e.g. seismology, tsunami engineering, architectonics, nuclear power engineering, politics, historical science. It is necessary for them to collaborate closely with each other to prevent the disaster and restore the damage. It also revealed the problem which is philosophical and especially related to the essence of environmental ethics, i.e. the relationships between humans and nature.

Mainstream of Environmental Ethics and Disaster Prevention

The mainstream of environmental ethics in the U.S.A has focused upon conservation of nature, not disaster prevention. One of its historical backgrounds is to establish National Parks after the pronouncement on 'disappearance of the frontier' in 1890. The nature to be conserved in U.S. environmental ethics is, above all, 'wilderness', which is primitive and undeveloped nature. Wilderness area is separated from inhabited areas; therefore, wildfire, flood and landslide can be regarded not as a disaster but as a natural process.

In Japan also researchers of environmental ethics were mainly concerned with conservation of nature; however, recently, they began to criticize the dichotomy of anthropocentrism and non-anthropocentrism which has been the core of U.S. environmental ethics. Now Japanese researchers are more concerned with symbiosis between humans and nature. The typical good relationship of the symbiosis between humans and nature in Japan has been represented as a pastoral life near Satoyama (a wooded area near a village).

The Great East Japan Earthquake shows the necessity of disaster prevention, which has been ignored for a long time in environmental ethics. Disaster prevention has been regarded as a task of engineering sciences, however, disaster prevention is necessary to form, maintain and restore good relationships between humans and nature. For example, the Japanese ideal situation of symbiosis in Satoyama is realized only if a village is not destroyed by disasters. Ideal relationships symbolized by Satoyama may be only transient happiness that appears when there occur good relationships between humans and nature.

There are several reasons why disaster prevention has not been considered as a task of environmental ethics. One is concentration on wilderness conservation or on symbiosis between humans and nature, whereas negative features of nature such as a disaster is outside the field of vision. In fact, nature has two aspects; a gentle, beautiful aspect and a capricious, furious aspect. The second is overestimation of human power over nature. Because our power has become so strong, we have responsibility to conserve natural environments. It may be said that modern technology and environmental ethics have a presupposition in common, i.e. our

technology exceeds nature and in the future we can control natural power. In this context also disaster prevention is not a task of environmental ethics but that of technology.

Nature as Life

If we pay attention to the aspect of disaster prevention as well as nature conservation, what kind of view of nature should be adopted? It may be possible to adopt a mechanical view of nature, i.e. every natural event occurs according to the laws of nature and it is causally determined, and if its causal process is not known to us, it may be regarded as contingent. In this viewpoint, disasters themselves remain events essentially outside of our lives and we can approach them only by natural sciences, such as seismology, meteorology, tsunami engineering and volcanology. Disasters themselves don't seem to have anything to do with environmental ethics; however, environmental ethics can play a role in discussing natural disasters. It may deal with the issues such as moral and practical effectiveness of damage control and recovery from the damage, or inequality among the victims. Also we can hold a view of nature as life. Nature as life not only gives us blessings but sometimes shows fury to us. It is a primitive animistic view and seems to lie deep in our mind. In this animistic standpoint, we understand the significance that disasters have for our behaviors, and natural disasters, our daily life, politics etc. are mutually related, i.e. linked cosmologically. Some may adopt the mixture of both viewpoints, i.e. nature contains not only lives such as animals, plants, bacteria, but also inanimate matter.

It may seem mythical to regard nature as life, but, especially in Japan, even now, there remains a lot of customs whose origin is animism, such as a sacred rope around a tree, ground-breaking ceremony, mountain opening ceremony, sea opening ceremony, bon festival (memorial to the souls), itadakimasu (thanksgiving to the lives eaten), picnic under the cherry blossoms, moon viewing, memorial services for laboratory animals, monuments of fish and shellfish near the fish market, monuments of kitchen knives, memorial services for old needles, and so on.

Good relationships as peace

Environmental ethics and bioethics are two of the major applied ethics, and they not only may feature different principles but have different issues to discuss. Though the principles of environmental ethics vary according to researchers; however, in general, they include non-anthropocentric principles, i.e. intrinsic value of individuals or species other than human beings, restraints on liberalistic rights, and responsibility to future generations. Corresponding to its principles, environmental ethics deals with rights of animals, plants and eco-system, global warming, ecological destruction, energy issue and population issues. As is well known, principles of bioethics include respect for autonomy, non-maleficence, beneficence, justice, respect for human dignity, sanctity of life and solidarity. It deals with ethical, legal and social issues concerning medicine and biomedical sciences. The philosophical basis of bioethics is a modern concept of persons and liberalism, whereas

environmental ethics is grounded on an ecological fact of mutual interdependence of all the living things and skepticism to liberalism.

If we take the position of nature as life, the main concern for environmental ethics can be regarded as good relationships between humans and nature, i.e. between lives. Bioethics is mainly concerned with the relationships between healthcare professionals and patients. Therefore, taking the viewpoint of nature as life, environmental ethics and bioethics can have the common task, i.e. to form, maintain and restore good relationships between lives. In order to form, maintaining and restoring the good relationships, dialogue among parties involved is needed; dialogue between humans and nature (environmental ethics), and dialogue between human beings (medical bioethics).

Generally, the process of restoration is as follows:

- (1) Disorder or bad relationship, i.e. disaster, destruction, pollution, illness and depression occurs.
- (2) Dialogue starts between or among lives. In environmental ethics, dialogue manifests itself as constant self-reflection of human beings regarding the attitude toward nature. It looks like listening to the voice of nature, as it were, listening to a silent voice. In bioethics, dialogue is practiced on the conditions of respect for human rights, mutual recognition of personhood, taking into consideration individual situations and needs, face to face deliberation etc.
- (3) Based on the dialogue, treatment i.e. form, maintain and restore good relationships starts. It contains formation of a policy, deliberating a way to live and, of course, medical treatment.
- (4) Finally, the order, good relationships returns. Good relationships can be called 'Peace'.

Age of the co-existence with disasters

As mentioned at the beginning of the article, in 2011 Japan suffered serious damage of an earthquake, tsunami and atomic-power accident. It is said Japan has entered a period of brisk seismic activity. However, to change our standpoint, now we are faced with disasters of a global scale such as global warming, ozone depletion, air pollution, radioactive pollution and global food crisis in addition to the increase of damage caused by local disasters such as hurricane, flood. Moreover, due to the increase of interaction with people from all over the world, infectious diseases have become pandemic. It may be said we are in the age of disaster.

Moral attitudes worth considering in such an age seem to be; first, realize that nature has inevitably two aspects, i.e. it not only gives us blessings but sometimes shows fury to us, second, give up extravagance and taking seriously the quality of lives of future generations in order not to pass on to the future an unbearable burden, third, know the limits of technology and science and hold nature in awe, fourth, to be courageous, neither depressed nor escaping from reality, and finally respect us with each other and enjoy our lives. It may be called the attitude of co-existence with disasters, or that of co-disaster.

Ethical, Legal and Social Issues (ELSI) that affect peace in Contemporary India

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Abstract

India is an ancient land, extending back to the Vedic civilization. India's historical importance is recorded in the Book of Esther (Bible) (Ch. 1:1) India formed a landmark country in the Medo-Persian Empire when King Xerxes 1 (Ahasu-erus) ruled over 127 countries (483 BC). It is noteworthy that the Jews (3:8) and the Vedic people did not mix with other national cultures of the Empire because the Jewish Laws were different targeting the social values. The Ten Commandments and Mosaic Laws were geared to keep community and family values. On the other hand the Vedic rules and regulations that kept the well being of the society were contained in their Scriptures. Each nation and each culture was living in peace and international law was the dialogue that sustained peace. Can Laws in contemporary India ensure such a peace in the family and society?

Ancient Vedic India practiced rich bioethical principles in science, medicine and cosmology. In medical science and technology, ancient classical treatises like *Charaka* and *Sushruta* are standing testimony that there was a well established health care system with well qualified surgeons and physicians like **Charaka** who was the official physician of the kings like *Kanishka* in the first century AD. Scientific knowledge was so well advanced that medical interventions like lithotomy (operation for the removal of bladder stones) and repair of damaged nose were of common occurrence. Their physicians recognized the dignity of life and were experts in alleviating pain and curing diseases. Physicians were prescribed bioethical laws so as to lead a balanced personal bioethical behavior. Human health was their prime interest and hence social peace was ensured..

Ancient India proclaimed and practiced a life of peace in day to day life. Although it was a nation with then international trade links it did not wage a war against any nation that was located in its trade routes. The present paper highlights the paradigm shift in its social values that has affected the peace of the community. One of the social evils is that of the custom of giving dowry in marriages. The girl's parents pay a heavy sum of money besides gold ornaments to the bridegroom's parents. Hence a girl child is always a terrible financial "burden" to the family. And hence she is eliminated before or after birth. The Government enacted a federal law – The Pre-Conception and PreNatal Diagnostic Technique (PC&PNDT) Act to maintain a healthy and peaceful sex ratio. The 1971 census recorded a ratio of 941 females to 1000 males which has been reduced to 914 which is the National Sex Ratio (2011). In some States it has dropped to about 750 girls per 1000 males. The Government proposed to lift the ban. Such recent damage control

move by the government has been discussed in terms of peace and harmony in society.

Introduction

India is an ancient land. Its antiquity extends far back in history to the Vedic civilization.

The Book of Esther (Bible) mentions the nation of India. This book narrates many historical events dating back to about 483- 470 BC. At that time the Medo-Persian Empire was a global super power. The King of Persia was king Ahasuerus (Xerxes I). His kingdom extended from India to Ethiopia (Es.1 :1) with 127 provinces. It was a multicultural (pluralistic), multinational, multiethnic and multi-lingual kingdom. Every province retained its ethnicity and linguistic identity. The King laws were "written in the scripts and languages of all the people of the empire, including that of the Jews" (8:9) and sent through swift messengers who rode fast horses especially bred for the kings services (8:10) to all the highest officers, the governors, and nobles of all the 127 provinces. It also states about the characteristics of the then Jews: The King was informed by one of his ministers that "There is a certain people dispersed among the peoples in all the provinces of your kingdom who keep themselves separate...Their customs (laws) are different from those of all other people, and they do not obey the king's laws; it is not in the king's best interest to tolerate them". It is a clear case of racial discrimination. Historical research indicates that the Vedic people also had their own laws, customs and maintained their distinguishing ethnic identity. It is noteworthy that the Jews (3:8) and the Vedic people did not mix with other national cultures of the Empire because the Jewish Laws were targeting different social values.

Adherence of The Ten Commandments and the Mosaic Laws were in practice to keep community and family values. On the other hand the Vedic rules and regulations that kept the well being of the society were contained in their Scriptures. Each nation and each culture was living in peace and international law was the dialogue that sustained peace. Can Laws in contemporary India ensure such a peace in the family and society?

Ancient Medical Advances in India

Ancient India practiced rich bioethical principles in science, medicine and cosmology. In medical science and technology, ancient classical treatises like *Charaka* and *Sushruta* are standing testimony that there was a well established health care system with well qualified surgeons and physicians like *Charaka* who was the official physician of the kings like *Kanishka* in the first century AD. Scientific knowledge was so well advanced that medical interventions like lithotomy (operation for the removal of bladder stones) and repair of damaged nose were of common occurrence. Advanced knowledge on internal medicine was at their finger tips as they were well versed in botanical knowledge of medicinally important herbs and plants (1008 in number), 25 types of salts, 64 types of arsenic, 9 different metals and about 120 varieties of metallic essences. They were expert physicians in alleviating pain and curing diseases.

Physicians were prescribed a balanced personal bioethical behavior (Azariah, 2003). Human health was their prime interest.

Status of Human Foetus

Both Hindu scriptures (Vedic period) and Christian scriptures (AD 1) affirmatively confirm that the foetus is a conscious person since it meets it meets the personhood-criteria set by Prof Peter Singer. In both Hindu and Christian scriptures references to the foetal quality of life can be found.

Religious Documents - Hindu

The Indian Vedic classical Epic *Mahabharatha* outlines the episode of *Krishna's* conversation with his pregnant sister *Subharhtra*. This Hindu Scriptures tell the story of *Abhimanyu* who was conceived in the womb of *Subharhtra*. The conceptus *Abhimanyu*, as a foetus responded to *Krishna's* narration on the complete military strategy of a specialized military formation called the "*Chackkra-uha*". The foetus heard the secret of braking such a complex military formation as well as the method to get into it. *Abhimanyu* responded to the narration which angered *Krishna*. Hence *Krishna* did not complete it as to how to get out of the formation after entry. At the age of 16, *Abhimanyu* broke the military formation, but was killed since he did not know how to get of such a complex military formation. The listening capacity of the foetus *Abhimanyu* can throw light on the bioethical concept of foetus as a human person which stands in contradiction to many of the modern bioethical positions (Azariah, 2006).

Religious Documents -Christian

New Testament scriptures provide elaborate description by a medical doctor who is the author of the Gospel of St. Luke. He refers to the foetal quality of life. When Mary, the mother of Jesus and Elizabeth met (Luke 1:35-44) he has recorded that (v. 41) the babe leaped in her womb (v. 44). The babe not only responded by leaping in her womb but also the leap was qualitatively different since the baby leaped for joy. John the Baptist was a person in his mother's womb. This passage indicates (i) the close organic relationship between the mother and the foetus; (ii) both behave like "twins" (i.e., one is able to communicate with the other without words); (iii) the foetus is able to "hear" the greetings and understand and respond (i.e., the foetus was conscious of the events going around him and responded accordingly); (iv) the mother is able to assess the differences in the response of the growing foetus in her womb; (v) there are differences in the response of the foetus, it is not just "movement of the foetus" which is the natural behaviour of the foetus during the sixth month of gestation (i.e., it "leaped" – a quantitative difference which the mother can sense); and (vi) the foetus has an enjoyable experience. The phrase "leaped in my womb for joy" can be taken to mean that *John the Baptist*, in the foetal stage of his life was able to see the mission-fulfilling continued life of Jesus, and maybe also his own (Azariah, 2006).

Singer (1993) has characterized ethically relevant characteristics of the human person. Consciousness is a

chief ethical parameter, which is the capacity for physical, social and mental interaction with other beings, having conscious preferences for continued life, and having enjoyable experiences. On this basis, John the Baptist, as a developing foetus in his mother's womb, was a person and may be categorized as having a good quality of life and with a good foetal value of life in the sixth month of the gestation period itself.

In the view of post-liberal bioethicists like Giubilini and Minerva (2012) both *conceptus* and the newborn baby are not persons but they are potentially future persons. The newborn baby attains its 'self consciousness' only a few weeks later.

Status of foetus – ICMR Guidelines

Interestingly the Indian Council for Medical Research – ICMR's (2000) Ethical Guidelines for Biomedical Research on Human subjects also considers a live aborted foetus if it is alive then it is a person (p. 75 and Page 81 in ICMR 2006). The ICMR guidelines state the following:

Foetal Stage (a) Live aborted foetus: If an aborted foetus is alive, it is a person, no matter how short the period of gestation, and using it for an experiment would, in law, be considered an assault upon it

Foetal Stage (b) Dead Foetus: An expelled or delivered foetus that exhibits no heart beat or spontaneous breathing. Some organs tissues and cells remain alive for varying periods after the moment of death of the foetus.

ICMR guidelines also state that no research is permitted to be carried out on live aborted foetus because it is a person.

Recorded data on female foeticide

In an earlier paper Azariah (1994) reported the following "In India about 12 million baby girls are born every year of which 1.5 million die before their first birth day another 8,500,000 girls die before their fifth and by the 15th year only 9 million will still be alive. In Bombay in 1984, 40,000 female foetus were aborted. In one hospital out of 8,000 abortions performed, 7,999 were females which have created an imbalanced situation where there were 23 million excess males in the country. The ancient Indian "dharmaum" (duty and justice) has lost its meaning in the modern world which is because of economic considerations had replaced human values.

What are these economic values?

The modern incredible India has two inbuilt social evils that are ingrained in Indian culture with a diamond tipped pen: (i) The system of giving and taking dowry and (ii) the caste system. These two ingrained evils come to the surface during the time of marriage. Usually Indians marry within their own castes and inter caste marriage also takes place. Secondly, in the dowry system the girl's father pays in cash as a dowry to the bridegroom's parents. Amount of dowry is fixed and bargained depending upon the status and educational qualifications of the bridegroom. If the groom is a professionally qualified person then the dowry amount is higher. In the economics of marriage the dowry amount is negotiable. In some cases the dowry includes the free transfer of

landed and immovable house properties. Naturally when a girl's family is unable to meet the demands of the bridegrooms family then it breaks which is chiefly due to the dispute in fixing and paying dowry. The bride and the groom do not see this money transfer and also do not enjoy the benefits of money. It is almost equivalent to buying the bridegroom by the girl's father. The paradox is that the buyer is not the owner of the property! In the modern world giving birth to children is an expensive endeavor. And in India giving birth to a girl baby is the most heavily laden financial burden. The proverb goes like this: build a house and see the difficulty. And arrange a marriage and enjoy the fun. In addition to these financial transactions, the father of the bride should deck his daughter with gold ornaments which also varies from one case to another. Gold is generally considered as a substitute to financial security. In spite of the price high for ornamental gold Indian's appetite for gold is still on the rise. In the second half of 2011 the consumption of gold amounted to 933.4 tonnes (The Hindu, 2012). It also should be pointed out that there are cases where the gold resources have been abused by the groom's party. After the wedding ceremony is over the bride's family will bear the expenses towards the lavish wedding feast to all the guests. The number of guests may be around 800 or more. After have done all these, the burden of setting a house for the newly wedded couple may also fall on the bride's father. For the first confinement the girl returns to her parent's house. This means that the hospital charges incurred in connection with the child birth is also added to the cart!

Such is the tragic burden the bride's family has to face in trying to establish their daughter in marriage. Right from the birth the family has to make sacrifices to save money for the daughter's wedding. No family outings can be undertaken.

Generally most marriages are 'arranged marriages' in the sense it is the parent's business to get their children married. Such a practice also brings in other problems. Due to changes in social and cultural changes, the age at which a girl is married also moves towards 30 years which makes adjustments between two previously unknown persons to be married makes life of the newly married couple rather difficult. In some cases the elder sister remains unmarried and earns so as to get her other younger sisters married.

Tardy Laws

Hence a girl child can be treated as a terrible financial "burden" to the family; hence she is eliminated before or after birth. There are some easy methods to eliminate a new born girl child. So a girl child is dead soon after her birth. As the first line of defense against female foeticide, sex determination tests on pregnant women have been made illegal in India for years. The Indian law - The Pre-Conception and Pre Natal Diagnostic Technique (PC&PNDT) Act was enacted to maintain a healthy and peaceful sex ratio. A law can be enacted but implementation of such law is difficult. Even though sex selection is illegal, unethical, and unjust, female foeticide is on the rise. The 1971 census recorded a ratio of 941 females to 1000 males which has been reduced to

914 for the National Sex Ratio for the year 2011. In some States it has dropped to about 750 girls.

Cultural and social Implications

In India like many other countries the word marriage is used to denote the legal union between one man and one woman. When the sex ratio worsens to 1000 males to 700 (10 to 7) females then there may be new changes in Indian cultural and social values. If the meaning of marriage remains unchanged then it means that there can be only 7 marriages i.e. 7 boys could marry 7 girls. Naturally 3 boys may have to remain unmarried. The marriage market would carry the sign board "No more stock" of girls. When University students were apprised of such a future situation their responses were disturbing. They indicated that cohabitation, polygamy/polyandry, sexual revelry among male partners and the like may be of common occurrence. To meet the shortage of 'wife' one could adopt the concept of 'part-time wife'. Currently there has been legal proceedings on the viability of homosexual sexual-lifestyles in Indian context (Trivedi, 2012; Venkatesan, 2012).

As sex ratio worsens

The latest 2011 census recorded the lowest ever child sex ratio of 914 females to every 1000 males. It is a decline from the 1971 census from 940. In the face of imbalance in the present sex ratio and with an expectation that it will deteriorate further the Planning Commission panel put forward a taboo proposal in order to prevent a major shift in policies. According to a Planning Commission member Syeda Hamid "Instead of totally banning sex determination, which the government has failed to do, it would be a better idea to be flexible on allowing sex determination — if families so choose — and in case it is a female foetus, the government will 'adopt' it,"

The idea behind the Commission's proposal to relax the legal ban for rural areas as part of a programme of "adopting" female foetuses and generously incentivising families and health workers to ensure the safe delivery of girl babies (Dhar, 2011). On the other hand the All India Democratic Women's Association (AIDWA) strongly condemned the Planning Commission's proposal to promote the "adoption" of unwanted female foetuses in a bid to stem the continuous decline in child sex ratios. The Commission's move to relax the ban in the name of "flexibility and choice" tantamount to accepting the argument that sex selection is a matter of "freedom of choice", which has already been struck down by the courts while upholding the PC&PNDT Act.

Census data from 1971 to 2011 show that PC&PNDT Act has not been effective. The St. John's Academy of Health Sciences (SJAHS), Bangalore in South India held a series of lecture programs in collaboration with the Center for Global Health Research (CGHR) on the 16th Dec. 2011. One session was "12 Million Missing Girls in India: New Evidence on Selective Abortions". The number of persons killed in the practice of female foeticide is a clear case of genocide and could exceed any previous count in any other country.

Asian culture transported to the West

The Interim Editor in Chief of *Canadian Medical Association Journal* begins with a humor the sad episode of female foeticide in India and in Canada and America. Indian immigrants to the West not only brought taste curry recipes but also nasty cultural practice of female infanticide and its variations. In his editorial entitled "It's a girl!— could be a death sentence" (Kale, 2012).

In Asia selective abortion is practiced and the victim is always the unwanted female foetus. Asians of Sikh, Hindu and Chinese descent who have settled in Canada do practice sex selection (Picard, 2012). Even though child bearing and upbringing of children are expensive across the globe, the conception and birth of a female baby is the most unwelcomed event. The practice of giving and taking dowry will swindle a family's financial resources. In India, since 1997, a medical doctor is barred from disclosing the sex of the baby when the mother is subjected to ultrasounds and amniocentesis procedures. It raises yet another bioethical issue of women's right to know about even the small details of her pregnancy. But the message can be (is) conveyed through nonverbal methods. Therefore, it is difficult to enforce the existing law which prevents the disclosure of the sex of the foetus. In Canada a blanket ban on sex-selective-abortion would be unethical since all Canadians are not guilty of such a practice. It is only the Asian communities of Asia settled in Canada.

Dr. Rajendra Kale of the *Canadian Medical Association Journal* highlighted the global problem of female foeticide that happens in India and China by the millions. He pointed out that "it also happens in North America in numbers large enough to distort the male to female ratio in some ethnic groups. Should female foeticide in Canada be ignored because it is a small problem localized to minority ethnic groups? No. Small numbers cannot be ignored when the issue is about discrimination against women in its most extreme form. This evil devalues women. How can it be curbed? Therefore he has "called for a ban on disclosing the sex of a foetus until 30 weeks, at which point it is difficult to obtain an abortion" (Kale, 2012). Such stringent laws only lead to black-marketing in sex selective abortion. On the other hand, the National body representing Canada's obstetricians and gynecologists "contends that Dr. Kale's proposal flies in the face of accepted standards for patient care and fails to acknowledge that changing deep-rooted cultural beliefs, not imposing heavy-handed restrictions, is the key (Friesen, 2012).

It is unclear why American and Canadian citizens of Indian and Asian origin should resort to sex-selection-abortion when there is no economic hardship. According to Kale's editorial that in U.S. 40% of 65 female Indian immigrants "had previously aborted a female fetus and 90 per cent of those currently pregnant with a girl had pursued the idea of abortion" (Kale, 2012; Friesen, 2012).

The practice of sex-selective-abortion is a combination of cultural, social and spiritual problem and it can't be healed through law. Giving and taking dowry is illegal by a Government ban. But still the name dowry has been changed to 'giff'. Somehow the parents of a girl want to

get her married since an unmarried girl in a family is a social taboo.

Sex-selective Termination - UK

Newspaper reporters of the "London Telegraph" carried out an undercover operation to unearth the illegal practice of sex-selective abortions in UK. Their investigations revealed that out of 9 abortion clinics 3 clinics were willing to provide medical termination of female foetus by a simple procedure of falsifying the reasons for such termination, the reasons provided include 'too young for pregnancy' and 'social reasons'. The morale of health providers and life savers has been unethically sour. Some parents are engaged in 'gender balancing' which is to have a girl and a boy in the family. If the second pregnancy is the same sex of the first then it is a 'wrong sex' marked for termination. Hence, abortion of conceptus has become "too easy". It has been reported that in the last two decades there was an increase of 3,700% in abortions in UK (Cook, 2012).

U.S. abortion debate

An American debate on abortion was initiated through the submission of Proposition 26 which affirms that personhood begins at conception. It is a constitutional amendment facing voters in Mississippi (Nov. 8, 2011) and similar initiatives, brewing in half a dozen other states including Florida and Ohio, would declare a fertilized human egg to be a legal person, effectively branding abortion and some forms of birth control as murder. Further it seeks to add the following sentence to the state constitution: "The term 'person' or 'persons' shall include every human being from the moment of fertilization, cloning, or the functional equivalent thereof" (Eckholm, 2012).

It is the ultimate intention of its supporters that they want to use it to stop abortions. But its opponents claimed that it will turn the death of any zygote into murder. Further "[It] would ban virtually all abortions, including those resulting from rape or incest. It would bar some birth control methods, including IUDs and 'morning-after pills,' which prevent fertilized eggs from implanting in the uterus. It would also outlaw the destruction of embryos created in laboratories." Therefore such a proposal was not a feasible reality.

Italian way

Dr. Giubilini is a philosopher of the Milan University in Italy. Both the authors (Giubilini and Minerva, 2012) have Australian and UK (Oxford) affiliations. They have put forward a thought that both foetus and a newborn baby "do not have the same moral status as actual persons". Both are considered to be "potentially persons" at a later point in time. They have argued that "adoption is not always in the best interest of actual people". Hence they have termed the killing of the newborn as 'after-birth abortion'. Sadly they have emphasized that such killing (murder) "should be permissible in all the cases where abortion is, including cases where the newborn is not disabled" (Giubilini and Minerva, 2012). In their view in the case of "after-birth abortion" such elimination takes place not in the interest of the newborn baby but in the interests of the people involved. This practice is different

from euthanasia in which the act is carried out in the interests of the person who wishes to die.

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Ethical Issues of Surrogacy and Tourism for Surrogacy

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1. Background

Surrogacy is seen as a method of assisted reproductive technology (ART) and it means that a woman gets pregnant and gives birth to a baby on behalf of others under an arrangement. This woman is called a surrogate mother. She may not have any genetic connection or she may be a genetic mother of the baby (if she is going to donate her egg). After birth, the baby is

usually transferred to the person who commissioned the pregnancy.

The situation of regulating the practice of surrogacy is different among countries. They can be divided into three categories. The first one includes the countries which prohibit any types of surrogacy by formal laws. For example, in Switzerland, surrogacy is banned under the Constitution (Article 119). Other European countries, such as Germany,¹ Austria,² and Italy³ have the laws to prohibit any type of surrogacy. In France, any arrangements of surrogacy, whether commercial or altruistic, are illegal and unlawful.⁴

The second category embraces the countries which allow some practices of surrogacy under certain conditions. For example, in the UK, the Surrogacy Arrangements Act (1985) forbids making an arrangement of surrogacy on a commercial basis. Commercial surrogacy means that the commissioning person makes a contract with a surrogate mother for giving birth to a child and in turn the surrogate mother receives compensation for her work, except for the necessary costs such as expenses of medical check or delivery.

The third group has no legal regulation at present, whether prohibiting surrogacy or allowing it, or whether to permit commercial surrogacy or not. It includes some Asian countries. For example, it is said that surrogacy is relatively easy to practice in India and Thailand because there is no legal regulation, however, both countries are trying to promote the legislation now. In Japan, while the need for the legislation has been recognized by many, the government has not officially begun the process of legislating surrogacy services yet.

In this way, the practice of surrogacy and the legal regulations vary from country to country. Therefore, it can be said that the ethical treatment of surrogacy also has been affected by cultural practices, legal frameworks, and social backgrounds. The inconsistency of treating surrogacy among countries, and even within different jurisdictions of the same country, is an important issue.

2. Surrogacy in Japan

Here, let us examine the situation over surrogacy in Japan, as one of the countries belonging to the third category. In 1978, the first child through *in vitro* fertilization (IVF) was born in the UK and the first Japanese IVF baby was born in 1983. The same year, the Japanese Society for Obstetrics and Gynecology (JSOG) made a statement about IVF, where it was suggested that the access to IVF should be restricted to married couples and that eggs fertilized *in vitro* should be transplanted only to the women who originally possessed the unfertilized eggs. The statement is not legally binding and the rules based on it are simply an internal code of conduct for the members. Membership of JSOG is optional and voluntary, that is, not every Japanese obstetrician must participate in it. Moreover, even if a member of JSOG breaks the internal rules, she would not lose medical registration as an obstetrician. The worst punishment is to be expelled from JSOG.

Practicing surrogacy had been left to obstetrician's autonomy, but a low accessibility to it has been kept within Japan. The Japanese government did not introduce legislation banning surrogacy. However, since 1980s, the Japanese couples who wanted to receive surrogacy went to the USA and requested American women to be surrogate mothers.

In 2001, an obstetrician in Matsumoto disclosed the case that he provided surrogacy in his clinic. In the case, according to him, a woman got pregnant on behalf of her sister who removed her womb and gave birth to a baby. In order to protect the privacy of the people concerned, the details were not described. The obstetrician has been providing the other surrogacy practices within families and they include some cases where the surrogate mothers are biological mothers of some infertile women. These inter-family cases can prevent some troubles, especially money issues, however, these cases certainly appear to complicate family relations.

Complicating family relations is one of the reasons why JSOG resists surrogacy. In 2003, JSOG made another statement about surrogacy and prohibited the members from practicing or arranging it. It stated that surrogacy should be prohibited by a formal law.⁵ To compound matters, Japanese civil law provides that a woman who delivers a baby is the legal mother of the baby.

In 2003, a famous couple in Japan, the wife is an actress and her husband is a wrestler, went to Nevada to receive surrogacy services using the embryos conceived from their gametes. The wife lost her womb because of cancer, but she hoped strongly to have a child inheriting the husband's and her genes. Finally, an American surrogate mother succeeded to deliver twins. The couple disclosed this process to the public. The public office did not accept that the wife is mother of the twins and the Ministry of Justice maintained the principle in the Civil Code that the birth mother is the legal mother, while the twins are the couple's children genetically. The couple filed a suit against the decision. The case went to the Supreme Court. In 2007, the Supreme Court did not admit finally that the wife was the legal mother.⁶ However, it suggested additionally that the existing law needs to be reviewed immediately.

As the result, people expected a law to treat surrogacy to be enacted. The Ministry of Justice and Ministry of Health, Labour and Welfare had periodic discussion about it separately. Both ministries asked the Science Council of Japan to discuss surrogacy inclusively in 2006 and it organized the Assisted Reproductive Technologies Review Committee. The committee invited some people to hear opinions about surrogacy, including not only experts but also the people who was received surrogacy and was born through it. The final report "Issues Related to the Assisted Reproductive Technologies Centered on Surrogate Pregnancy -Toward a Social Consensus-" was provided in 2008.⁷ The report made ten suggestions and these are summarized as follows:

- 1) Surrogacy should be prohibited by a new formal law, not left in the current unclear legal situation.
- 2) The commercial surrogacy should be punished

¹ See the 1990 Embryo Protection Act.

² See the 2004 amended Reproductive Medicine Act.

³ See the 2004 Medically Assisted Protection Law.

⁴ See the Code Civil, art 16-7.

⁵ Kodama (2011), p.35.

⁶ 23th March 2007, Tokyo Supreme Court.

⁷ <http://www.scj.go.jp/ja/info/kohyo/pdf/kohyo-20-t56-1e.pdf>

legally and then the punishable offenders should include the doctor providing surrogacy, the coordinator, and the commissioning person. Surrogate mothers should be excluded from those punished.

- 3) However, the surrogacy as a clinical trial may be considered under strict control, only when there are absolute medical indications where women were born without the womb or had it surgically removed it for medical treatment.
- 4) In order to control the surrogacy trials, a publicly-managed regulatory body should be established. On receiving the results, the trials would be decided to be continued or stopped.
- 5) Birth mother is regarded as legal mother, so that in the case of surrogacy the surrogate mother is the legal mother. The same holds for surrogacy conducted in other countries.
- 6) The parent-children relationship between the commissioning couples and the children born through surrogacy would be established through the adoption procedure.
- 7) Although children's' rights to know should be respected from the viewpoint of children's welfare, that needs to be considered in the case of Artificial Insemination by Donor (AID) as well.
- 8) Other issues of unfertilized egg donation and pregnancy using frozen sperm after the owner died, are still controversial and it is necessary to continue discussing ART in general.
- 9) To discuss bioethical issues, it is desirable to be established a new public and permanent committee, with a view to future policy-making.
- 10) The welfare of children should be put most priority in discussing ART.

In this way, the Assisted Reproductive Technologies Review Committee showed a future direction and was then dissolved. However, making a policy has not proceeded yet and Japanese society has been confronted with a difficult decision. It is said that more than one hundred babies have been born through surrogacy in other countries, but it is not known how many children were really born in the country and overseas. The actual circumstances have not been grasped at all.

3. Expanding surrogacy tourism

As we have seen above, in the past the United States was the common surrogacy destination among the Japanese. Since the 1980s, many babies were born through surrogacy. There is not regulation about surrogacy in the federal law and the treatment depends on states. Some have formal laws to prohibit providing surrogacy and others admit it on a commercial basis (Senba, 2008, p. 121-2).

Now tourism for surrogacy to Asia is increasing. Thailand, India and Taiwan, at present, have no specific legal regulations on surrogacy and therefore its practices are relatively easy-to-access. One reason of choosing these countries is that the expense is cheaper than the USA.

Taking Thailand as an example, because of no regulation, it is said that some clinics have accepted, foreign couples, same-sex couples and women without any medical indication. In 2009, a couple who lived in Australia received surrogacy in Thailand and then babies were born. When they tried to fly back home, the passports of the babies were not issued. Given the quickly-growing practices and troubles of surrogacy, the Thai government is being urged to deal with things.

The present Thai Family Law provided that the birth mother is as the legal mother so that the surrogate mother is regarded as the legal mother even if she does not have a genetic relation to the baby. Moreover, when a surrogate mother got married, the husband is seen as the legal father of the baby, but the commissioning couples have no legal rights as a parent of the child. In May 2010 the Thai Cabinet approved draft legislation in order to make the parent-children relationship clear and protect the interests of children born through surrogacy and surrogate mothers.⁸ The draft includes the following points:

- The eggs from surrogate mothers should not be used.
- Only women who got married can be a surrogate mother.
- The commissioning couples pay only the necessary expense during the process, do not reimburse the more expense as reward.

The main issues are whether commercial surrogacy should be admitted, whether only married couples should be permitted receiving surrogacy, and whether people from countries where surrogacy is illegal should be accepted. Especially, the last issue is relatively new and the countries already have the legal regulation to prohibit surrogacy need to address it. That is, those countries need to consider responses to the people who access surrogacy in foreign countries and the children born through surrogacy.

Some kind of gambling or drug is legal in some countries. Even if people from the other countries where they are illegal, go there in order to enjoy them, it would not be punished legally. Should the government interfere with decisions of autonomous adults who decide to go abroad and enjoy such practices there on their own responsibility? Or should the government force to forbid the international access to surrogacy to the nation? Given the increasing and cross-border practices of surrogacy, each country needs to consider about ethical issues not only from the national viewpoint but also from the international viewpoint.

4. Comparison with organ transplantation tourism

Related to the commercialism, it is often pointed out that surrogacy can be exploitation of the poor and vulnerable women. In particular, in the case of the cross-border surrogacy, such a tendency may be enhanced based on the economic gaps between countries. This shows similarity to tourism for organ transplantation and organ trafficking in a sense. In 1980s,

⁸ The proposed legislation is contained in the Assisted Reproductive Technologies Bill.

tourism for kidney transplantation toward the Philippines or China by Japanese patients emerged as a social issue (Matsuno, 1998). Kidneys were sold mainly because of coping with the cost of living. Then, it was asked that whether the commercialization of human body or organ is permissible, or whether people have the right to trade off their own kidneys.

Now, in order to consider whether tourism for surrogacy can be seen as a kind of exploitation, let us compare it with tourism for organ transplantation. One of the differences between both is the different degree of shared understanding them. The ethical criterion of good or wrong over organ transplantation has been made clear considerably. Organ transplantation itself cannot be seen as ethically wrong in most countries and it is sometimes said it is a disability or even noble action to save the people who cannot survive otherwise. However, that from whom and how organs are donated is questionable ethically. Ensuring organs from the brain-dead person may be still controversial in some places.

In contrast, the organ trafficking is clearly regarded as ethically wrong consistently. In 2004, WHO suggested the member states to take measures to protect the poor and vulnerable people from tourism for organ transplantation and organ trafficking. In 2008, a summit meeting was held to address the global shortage of organs in Istanbul by International Transplantation Society, and the declaration of the summit says that each country should try to meet the organ transplantation needs in their own countries as far as possible. Moreover, the declaration claims that organ trafficking is exploitation.

Unlike organ transplantation, whether the practice of surrogacy itself is ethically justifiable or not falls into disagreement, as we have seen the different treatments among countries. Even non-commercial surrogacy can be viewed a kind of exploitation in some countries where any types of surrogacy are illegal. It is difficult to define which practice should be called exploitation. Generally speaking, when someone does not receive what is due him/her and there is a significant unfairness between them, it could be called exploitation. Typically, when a work is quite risky but the wages are very low or when return for something which a person provides is quite insufficient, it may be judged to exploit him/her.

In the meaning of the invasiveness of body, organ transplantation may be said to be more invasive than surrogacy. Although pregnancy and delivery can be potentially fatal, most women experience giving birth to children. Moreover, taking into consideration age or physical condition of the candidates and choosing surrogate mother carefully can decrease the potential risks.

In this way, when we think about the case of surrogacy, the definition of exploitation seems to be more difficult. In order to avoid exploitation of surrogate mothers, it may be desirable to ensure the fair relations between the commissioning person and surrogate mothers. For the purpose of protecting surrogate mothers, some money may be paid to them as the necessary expenses or more over, precisely because the values of pregnancy and delivery are appreciated. Apart from the negative evaluation included in the word of

exploitation, tourism for surrogacy may need to be revalued.

Lastly, the significant difference between organ transplantation and surrogacy is that surrogacy can be beyond the framework of self-determination. In the case of organ transplantation, as long as the donor and recipient are competent and autonomous, their decisions about organ transplantation should be respected.⁹ In contrast, in the case of surrogacy, in the meaning that children are produced as the result of the decision, the decision can be regarded as beyond self-determination. The welfare of children through surrogacy is another important element should pay attention to in tourism for surrogacy.

6. Who may access the surrogacy?

It has been repeatedly asked in the debate over surrogacy whether surrogacy can be recognized as a kind of medicine or not and whether infertility should be regarded as a kind of disease. If Infertility should be regarded as a kind of disease, then an infertility woman would be a patient and she would have the right to receive appropriate treatment.

Medical indication can be a criterion to judge to whom surrogacy should be open. Some women who were born without the womb or surgically removed it for treatment, are impossible to conceive children. If they desire to have children genetically-connected, they need the others' womb necessarily. In this sense, those women have the absolute medical indication of surrogacy.

Other cases can be considered. In the case of women who correspond to habitual abortion, it is difficult to continue being pregnancy. For women with some disease, such as severe cardiac disease, getting pregnant is possible but it can be risky. They may be regarded the patient with medical indication relatively. It seems to be difficult to draw a line between acceptable cases and the other ones. Moreover, there is a correlation between the women' age and the increased risk. The relative medical indications of surrogacy differ in countries.

Moreover, in some countries, the marriage between the same-sex people is accepted legitimately. If same-sex couples have the right to get married, then they may have the right to plan a family. Surrogacy may a possible option for them to become a parent. They may be potential target group of surrogacy.

7. Final remarks

Surrogacy itself has the complicated problem structure and the ethical evaluation and the legal treatment are different in counties. It is legal in some countries although it is illegal in other countries. Moreover, there is a stream of people from the countries where surrogacy is illegal and the problem structure grows more complex. Such differences are partly based on a different interpretation of becoming a parent or a family, benevolence to others, welfare of children and so on. The new technology of surrogacy makes us reconsider the traditional values and may change the meaning of them.

⁹ The issue whether the decision by the donor is truly "autonomous" may remain.

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Ethical Research concerning Preimplantation Genetic Diagnosis by means of Embryo Biopsy and Polar Body Analysis in the Fight against Miscarriage—Is PGD the Selection of Life?

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Abstract

This paper will ethically examine two methods of preimplantation genetic diagnosis (PGD) by means of embryo biopsy and polar body analysis. These two methods can be implemented as precautions against infertility (focusing on recurrent miscarriage, and habitual miscarriage) caused by chromosomal factors (chromosomal disorders) in married couples; one of the causes of infertility in "an estimated number of more than 1,400,000 married couples", and we consider whether or not these two PGD methods should be thought of as the selection of life.

1. Is the JSOG endorsed embryo biopsy PGD implemented as a precaution against "habitual miscarriage (including recurrent miscarriage) thought to be caused by structural chromosomal disorders" the selection of life?

2. Is the JSOG non-endorsed embryo biopsy PGD implemented as a precaution against "miscarriage thought to be caused by numerical chromosomal disorders" the selection of life?

3. Is polar body analysis PGD the selection of life?

It is not possible to acknowledge individual gametes as possessing life, but from a developmental medical standpoint, where the awakening of life is thought to occur at the moment of insemination, both embryo biopsy PGD using PCR, FISH and CGH, as well as polar body analysis (secondary polar body excreted after insemination) PGD using CGH, are considered the

selection of life, whether they are used for the JSOG endorsed precautionary purpose of preventing "habitual miscarriage (including recurrent miscarriage) thought to be caused by structural chromosomal disorders", or for the JSOG non-endorsed precautionary purpose of preventing "miscarriage thought to be caused by numerical chromosomal disorders".

However, in reality, even in the natural circumstances of the womb, the selection of life occurs. Concretely speaking, chromosomal disorders (structural and numerical) frequently occur with inseminated egg cells under natural circumstances. Consequently, inseminated egg cells with chromosomal disorders, either do not become implanted in the uterus, or abort even when they do become implanted. There are cases in which this natural screening process is sidestepped and pregnancy occurs, but the number of such cases is extremely small.

If we arrive at a conclusion based on the above facts, then both embryo biopsy PGD and polar body analysis PGD used for patients suffering from "habitual miscarriage (including recurrent miscarriage) thought to be caused by structural chromosomal disorders", and currently JSOG non-endorsed embryo biopsy PGD and polar body analysis PGD as a precautionary measure against "miscarriage thought to be caused by numerical chromosomal disorders", are selective relief actions for the precious few inseminated egg cells that are able to be saved and should not be considered the selection of life.

Keywords: PGD, Polar Body Analysis, Ethics, Selection of Life, CGH, FISH

1. Foreword

As advanced medical treatment techniques for the prevention of habitual miscarriage (including recurrent miscarriage) thought to be caused by chromosomal disorders (structural and numerical disorders), we have the options of embryo biopsy PGD and polar body analysis PGD (primary polar body excreted from oocyte prior to insemination, and secondary polar body, post-insemination excretion) as diagnostic methods for blastomeres of inseminated egg cells. These advanced medical treatment techniques will be examined ethically, and it will be considered whether or not embryo biopsy PGD and polar body analysis PGD are in fact the selection of life.

2. What is embryo biopsy PGD?

Embryo biopsy PGD is an advanced medical treatment technique by which both genetic mutations and chromosomal abnormalities can be detected in pre-implanted inseminated egg cells, and normal inseminated egg cells can be implanted on the uterine wall.

In the implementation of PGD, the following three medical treatment techniques are indispensable.

A. In vitro fertilization and embryo transfer (below, IVF-ET)

B. Embryo biopsy

C. Genetic/chromosomal diagnosis

In embryo biopsy PGD, the first 1 or 2 blastomeres are taken from a 2 to 3 day old embryo (B. embryo biopsy), or several chorionic cells are taken from the blastocyst, followed by the examination for genetic mutations and

chromosomal disorders (C. genetic/chromosomal diagnosis). Finally, inseminated egg cells without genetic diseases or chromosomal disorders are produced outside the body and then transferred to the uterus (A. IVF-ET).

For the implementation of above C, the following three diagnostics can be used.

① Genetic disease diagnosis – in this case, genetic amplification (polymerase chain reaction, PCR) is the molecular biological technique utilized for the detection of genetic mutations in a single genetic disease.

② Pre-implantation genetic screening (PGS) – in this case, fluorescence in situ hybridization (FISH), and recently array CGH, are the molecular biological techniques most frequently applied for the detection of chromosomal disorders (structural and numerical).

③ Sex diagnosis – in this case, besides FISH, PCR and cell recycling are the molecular biological techniques applied for sex determination.

In short, embryo biopsy PGD¹⁰ entails PGD of inseminated egg cells by means of PCR, FISH and CGH.

3. Is embryo biopsy PGD the selection of life?

(a) Is the Japan Society of Obstetrics and Gynecology (below, JSOG) endorsed embryo biopsy PGD for the purpose of preventing “habitual miscarriage (including recurrent miscarriage) thought to be caused by structural chromosomal disorders” actually the selection of life?

Some members of handicapped persons' groups and the mass communication community are criticizing embryo biopsy PGD as a precaution against “habitual miscarriage (including recurrent miscarriage) thought to be caused by structural chromosomal disorders” to be, from an ethical point of view, the selection of life.

As stated above, in embryo biopsy PGD, the first 1 or 2 blastomeres are taken from a 2 to 3 day old embryo (B. embryo biopsy), or several chorionic cells are taken from the blastocyst, followed by the examination for genetic mutations and chromosomal disorders (C. genetic/chromosomal diagnosis). Finally, inseminated egg cells without genetic diseases or chromosomal disorders are transferred to the uterus (A. in vitro fertilization and embryo transfer (IVF-ET)). Those arguing against PGD criticize this selection of inseminated egg cells as the selection of life.

The people criticizing embryo biopsy PGD aimed at preventing “habitual miscarriage (including recurrent miscarriage) thought to be caused by structural chromosomal disorders”, judge this to be a selection that attaches qualitative differences to life. However, this is a

mistaken judgment. In the first place, in the case of structural chromosomal disorder patients, inseminated egg cells with structural chromosomal disorders are of frequent occurrence. And inseminated egg cells with structural chromosomal disorders either do not become implanted in the uterus, or abort even when implantation does occur. There are cases where this natural screening process in the womb is sidestepped and pregnancy occurs, but the number of such cases is extremely small. Therefore, embryo biopsy PGD for patients suffering from “habitual miscarriage (including recurrent miscarriage) thought to be caused by structural chromosomal disorders” is a selective relief action for the precious few inseminated egg cells that are able to be saved and should not be considered the selection of life.

(b) Is the JSOG non-endorsed embryo biopsy PGD aimed at preventing “miscarriage thought to be caused by numerical chromosomal disorders” actually the selection of life?

There exists criticism that if the current JSOG non-endorsed embryo biopsy PGD for the purpose of preventing “miscarriage thought to be caused by numerical chromosomal disorders” (for example, avoiding Down's syndrome's trisomy-21) should come to be implemented in future, that it would mean that a selection attaching qualitative differences to life would occur. There is some truth behind this criticism, but it is an unyielding fact that the natural screening process inside the uterus causes 80% of trisomy-21 to abort, and that an even higher percentage of other kinds of trisomy (besides X, Y, 13, 18, 21, 100%) abort. Based on this fact, the current JSOG non-endorsed embryo biopsy PGD for the prevention of “miscarriage thought to be caused by numerical chromosomal disorders” is a selective relief action for the precious few inseminated egg cells that are able to be saved and should not be considered the selection of life.

In considering the above questions, it is necessary to reconsider the origins of life and the definition of the quality of life. My personal opinion is that the origins of life lie at a time two weeks past insemination when the primitive streak is formed in the embryo. However, according to Anne McLaren, life begins at the moment of insemination. Nevertheless, although it's the same life, there are undeniable differences in the dignity of life within the period from insemination of the egg cell to the birth of the human being. Both the existing laws and social common sense have more respect for a born human being than an unborn child, and more respect for an unborn child than an inseminated egg cell. As proof of this fact, in the real world memorial services are held for miscarried/aborted fetuses, but none are held for inseminated egg cells. However, embryo human rights protagonists claim that, from inseminated egg cells to born human beings, all life is qualitatively equal and should be treated the same. If they are claiming though, as the Vatican does, that the disposal of “frozen redundant embryos” is “mass murder”, then these embryo human rights protagonists should urgently lecture on improvement measures against the current situation of induced abortion, in which every year millions of embryos are “massacred”. Also, since the contraceptive

¹⁰ In recent years, Whole Genome Amplification (WGA) has frequently been used as a treatment method in the event of implementation of inseminated egg cell PGD and polar body PGD. WGA is a DNA amplification method for which PCR, FISH and CGH can be used, equally amplifying a minimum of the DNA contained in inseminated egg cells and polar bodies across the whole genome. A task force at Keio University estimated that WGA is ‘a first step in the new era of PGD/PGS’ (T Sato, K Matsuoka, A Nakabayashi, Y Yoshimura : Preimplantation Genetic Diagnosis by whole genome amplification, PGD of the New Era, making a swift and easy genome-wide numerical duplication analysis possible, *The Practice of Obstetrics and Gynecology* 59 (4), Kanehara Publishing, 2010

device IUD (the so-called ring) has the effect of preventing implantation of the inseminated egg cell in the uterus, embryo human rights protagonists should immediately line up at the front of the struggle for the prohibition of this genocidal weapon. But do embryo human rights protagonists possess the resolution for this, or are they just acting like this?

Next, we will investigate the existing laws in Japan. Through the legal (criminal and civil law) provision for homicide (Penal Code, articles 199-203) and feticide (Penal Code, articles 212-216) the born human being as well as the unborn fetus are protected subjects. However, existing law does not stipulate when the fetus comes into existence. In the compensatory *Ministry of Health, Labour and Welfare decree on stipulations for reporting stillbirths*, it is stipulated that fetus excretion after 12 weeks is to be treated as a childbirth and must be reported as a stillbirth. In another compensatory law, *the regulatory law on cloning technology*, it is stipulated that "a fetus is a cluster of cells inside the womb of humans or animals, among tissues possessing the possibility of growing into an individual by going through the genetic process inside the womb, consisting of the placenta and affiliated tissues after the beginning of placenta formation" (article 2, paragraph 7). In any case, since the JSOG endorsed embryo biopsy PGD aimed at the prevention of "habitual miscarriage (including recurrent miscarriage) thought to be caused by structural chromosomal disorders" makes a diagnosis of pre-implantation inseminated egg cells, it cannot be recognized as the selection of life according to the existing laws in Japan.

Nevertheless, although individual gametes cannot yet be said to possess life, the seed of life sprouts at the moment a sperm cell and an egg cell meet. From the standpoint of developmental medicine, tracing the origins of life to the moment of insemination, both the JSOG endorsed embryo biopsy PGD aimed at preventing "habitual miscarriage (including recurrent miscarriage) thought to be caused by structural chromosomal disorders", and the JSOG non-endorsed embryo biopsy PGD aimed at preventing "miscarriage thought to be caused by numerical chromosomal disorders", are nothing more than the selection of life.

However, in reality, even in the natural circumstances of the womb, the selection of life occurs. Concretely speaking, chromosomal disorders (structural and numerical) frequently occur with inseminated egg cells under natural circumstances. Consequently, inseminated egg cells with chromosomal disorders, either do not become implanted in the uterus, or abort even when they do become implanted. There are cases in which this natural screening process is sidestepped and pregnancy occurs, but the number of such cases is extremely small.

If we arrive at a conclusion based on the above facts, then both embryo biopsy PGD and polar body analysis PGD used for patients suffering from "habitual miscarriage (including recurrent miscarriage) thought to be caused by structural chromosomal disorders", and currently JSOG non-endorsed embryo biopsy PGD and polar body analysis PGD as a precautionary measure against "miscarriage thought to be caused by numerical chromosomal disorders", are selective relief actions for

the precious few inseminated egg cells that are able to be saved and should not be considered the selection of life.

4. What is polar body analysis PGD?

In polar body analysis PGD, in contrast to normal PGD where an embryo biopsy is performed in order to diagnose inseminated egg cell blastomeres. Comparative Genome Hybridization (below, CGH) is implemented on polar bodies. CGH is a molecular biological technique equivalent to PGS. This comparative genome hybridization is a quick and comprehensive method for the detection of numerical duplication disorders (excess, deficiency, amplification, etc.) in the genome DNA of all chromosomes. Since 1992, when CGH¹¹ was first developed as a method for detecting duplication disorders in chromosomal genome DNA, it has been implemented as a method for analyzing genome disorders in solid carcinoma as a substitute for the problematic chromosomal analysis method that was in use until that time, but it is possible to apply CGH for the very accurate selection of inseminated egg cells without chromosomal disorders for the purpose of increasing the implantation rate in women, who are unable to become pregnant, with frequent inseminated egg cell implantation failure caused by chromosome aneuploidies. The pioneer who first detailed this application in his research was Dr. Santiago Munné. At the 2008 meeting of the American Society for Reproductive Medicine, Dr. Santiago Munné¹² presented the effectiveness of CGH implementation in the comprehensive analysis of chromosomal DNA by using cells biopsied from a blastocyst in achieving pregnancy. In this sense, CGH is an epochal diagnostic technique for the blastocyst (inseminated egg cells) trying to reach the goal of pregnancy, although for pregnant women of an advanced age who are exposed to the increasing danger of miscarriage caused by numerical chromosomal disorders in married couples, the ethical problem of choosing inseminated egg cells exists as before. This is due to the capability of CGH to locate, with a higher accuracy than FISH, blastocysts (inseminated egg cells) with unbalanced chromosomal translocations (100% miscarriage with natural selection) arising from gametes of the parent who is the carrier of balanced chromosomal translocations. However, as is the case with FISH, CGH cannot detect balanced chromosomal translocations that are not accompanied by numerical changes in genome DNA duplication.

By the way, CGH has been implemented for solid carcinoma and inseminated egg cells so far. In 2010, however, the European Society of Human Reproduction and Embryology (below, ESHRE) published the results of a clinical test study on CGH implementation for non-inseminated egg cells. According to information published by ESHRE's central office, healthy twin girls were born in Germany in June 2010 and in September of

¹¹A Kallioniemi, OP Kallioniemi, D Sudar, D Rutovitz, JW Gray, F Waldman and D Pinkel: Comparative genomic hybridization for molecular cytogenetic analysis of solid tumors, *Science* **258** (5083) : 818-821, 1992

¹²Munné S : Improving pregnancy outcome for IVF patients with preimplantation genetic screening, *Obstet Gynecol* **3**(5) : 635-636, 2008.

the same year a healthy boy was born in Italy as the result of in vitro fertilization and embryo transfer on a healthy ovum resulting from comprehensive oocyte screening using array CGH. The task force that was involved in this pilot study consisted of ESHRE president Luca Gianaroli and Dr. Christina Magli of the Italian Society of Reproductive Medicine (SISMER) in Bologna, Bonn University's Dr. Markus Montag and Prof. Hans van der Ven, with the analysis results of their pilot study presented at the ESHRE 2010 annual general meeting in Rome. The study reported that "the average age of participating patients in the clinical test study was 40" and claimed that "the method was useful for women over 37 and for those who had suffered from repeated miscarriage".

This PGD method of polar body analysis does not require embryo biopsy essential in common PGD, it is a non-invasive method for the non-inseminated egg cells that are to be diagnosed, and it is an effective method for increasing pregnancy rates in women of advanced age with an elevated occurrence rate of ovum chromosomal disorders. For this reason, the Reproductive Genetics Institute¹³ in Chicago, USA, reports a high number of cases in which polar body analysis PGD has been performed. Naturally, with polar body analysis PGD, only the genetic information of the mother can be obtained.

5. Is polar body analysis PGD the selection of life?

The problem arises as to whether or not the JSOG non-endorsed polar body analysis PGD as a precaution against "miscarriage thought to be caused by numerical chromosomal disorders" is in fact the selection of life. In actuality, a JSOG report concerning the appropriateness of polar body analysis PGD as a precaution against "miscarriage thought to be caused by numerical chromosomal disorders" does not currently exist.

Well, would it be possible to utilize polar body analysis PGD in order to avoid the ethical critique of selection of life accompanying the common PGD method requiring embryo biopsy by FISH and CGH?

No. And the reason for this answer is that, whether it is the common PGD method using FISH or CGH, or polar body analysis PGD using CGH, eventually an inseminated egg cell has to be chosen. For example, in the German speaking countries where the beginning of life is perceived at the moment of insemination, in order to increase the accuracy of the examination, both the primary polar body excreted by an oocyte prior to insemination (formed during the primary meiotic division process of the primary oocyte) and the secondary polar body excreted after insemination (formed during the secondary meiotic division process of the secondary oocyte) are normally used in the diagnosis, despite the fact that polar body analysis PGD is implemented in order to avoid the ethical criticism of the selection of life accompanying the common PGD method requiring embryo biopsy. At the moment a secondary polar body excreted after insemination is used, polar body analysis

PGD is converted from non-inseminated egg cell diagnosis into inseminated egg cell diagnosis.

In short, polar body analysis PGD not requiring embryo biopsy is ethical in the sense that it does not entail inseminated egg cell collection, but, in the sense that eventually inseminated egg cells are selected, its ethical evaluation does not differ much from common PGD.

However, as previously stated, even in the natural circumstances of the womb, the selection of life occurs. Concretely speaking, chromosomal disorders (structural and numerical) frequently occur with inseminated egg cells under natural circumstances. Consequently, inseminated egg cells with chromosomal disorders, either do not become implanted in the uterus, or abort even when they do become implanted. There are cases in which this natural screening process is sidestepped and pregnancy occurs, but the number of such cases is extremely small.

Based on the above facts we can conclude that, the current JSOG non-endorsed polar body analysis PGD aimed at preventing "miscarriage thought to be caused by numerical chromosomal disorders" is a selective relief action for the precious few inseminated egg cells that are able to be saved and should not be considered the selection of life, as with the JSOG endorsed embryo biopsy PGD used for patients suffering from "habitual miscarriage (including recurrent miscarriage) thought to be caused by structural chromosomal disorders".

Now, why is so much attention paid to CGH as a substitute for FISH? This is because CGH¹⁴ makes it possible for all chromosomes to be very accurately examined, whereas FISH only allows us to examine the twelve chromosomes 8, 13, 14, 15, 16, 17, 18, 20, 21, 22, X and Y. It is not due to any ethical reasons.

Incidentally, in the German speaking countries where collecting inseminated egg cells has been prohibited, polar body analysis PGD by FISH, PCR and CGH has a history of being implemented for ethical reasons. The polar body analysis PGD by CGH notwithstanding, compared to blastocyst (inseminated egg cells) embryo biopsy PGD by CGH, the accuracy level of analysis using CGH is considerably lower. In Germany, however, where people involved in reproductive medicine are greatly troubled by the low diagnostic accuracy level of polar body analysis PGD, that appeared on the scene as a substitute for embryo biopsy PGD, in 2010 the supreme court ruled (dated 6 July 2010) that embryo biopsy PGD was not illegal. Consequentially, the German reproductive medicine community, with PGD by polar body analysis as its mainstream, will draw attention in order to see if they will, in future, advance towards the endorsement of PGD by embryo biopsy.

¹³ Kuliev A, Cieslak et al: Chromosomal abnormalities in a series of 6,733 human oocytes in preimplantation diagnosis for age-related aneuploidies. *Reproductive BioMedicine Online* 6(11): 54-59, 2003.

¹⁴ Progress is also being made towards the possibility of implementing array CGH in searching for numerical disorder in all chromosomes by means of genetic chips. (Wells D, Alfalawati S, Fragouli E: Use of comprehensive chromosomal screening for embryo assessment: microarrays and CGH. *Mol Hum Reprod* 14: 703-710, 2008.)

Peace Through Bioethics: A Physician's viewpoint who experienced WWII

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Abstract

Three topics were presented: Changes in the Category of "Bioethics", Historic background of Japanese pacifism and militarism, and Pacific War, and the Postwar Japanese Constitution.

1. Preface

I am neither a bioethicist nor a philosopher but a medical practitioner who worked in Tohoku and Hirosaki University Hospitals in Japan. When I was a high school student, WWII and the Pacific War happened, and when I was a last year class student of Medical University, Japan accepted the Potsdam Declaration, and surrendered to Allied Forces after the loss of 3 million Japanese peoples' lives and almost all national valuables.

During WWII, as I was a medical student, and as I had not a few chances to contact with professors who had special information and personal experiences on Euro-American countries, including on the development of ABC weapons not only in Japan but also in other more developed countries such as U.S., U.K. and Germany, I had a great special interest on "Peace and War" and on a variety of ethical issues relating to human life and body, human society, all living beings and their environments. And I worked, after WWII, as a pacifist, especially as a member of IPPNW (International Physicians for the Prevention of Nuclear War) since the 1980s.

2. Changes in the Category of "Bioethics"

"Bioethics" is a wider concept than "traditional medical ethics", and can be understood as "the greatest good and happiness of the greatest number". In other words, more exactly, "the greatest number" can be understood as "not only of people and/or human beings but also of all living beings including all animals and plants, and furthermore of their environments including the earth and cosmos.

When we take this viewpoint, it may be said that bioethical issues can be classified into seven categories. The most important and the widest category is the maintenance of peace and the prevention of war, especially of nuclear war.

The second most important is the security of materials and environment necessary for human lives, plants and animals, such as clean air, water, foods, fuel, green, and minimization of secondary hazards of natural disasters such as earthquake, tsunami and so on.

The third important category is the allocation of medical and health care resources.

The fourth is problems relating to elderly people (including euthanasia).

The fifth is problems relating to handicapped fetuses, children and adults.

The sixth is problems relating to modern assisted reproductive technologies.

And the seventh is problems relating to brain death and organ/tissue transplantation.

In other words, bioethics is now bi-polarizing from global environmental level to gene level, and from medico-clinical controversies to the future of billions of people.

3. Historic Background of Japanese Militarism and Pacific War

As I have an opinion that "Ontogenesis" is very closely related to "Phylo-genesis", using this opportunity, my own small memoranda on "Japanese history and Japanese mind" from a viewpoint of "Peace and War" are presented below.

Japanese History Chart

- 1543 Portuguese landed at Tanegashima.
- 1600 England established East India Company.
- 1603 Tokugawa Ieyasu named Shogun and established the Edo Shogunate System and Government.
- 1612 Tokugawa Shogunate banned Christianity.
- 1635 Shogunate Government ordered not to leave for, or return from foreign lands.
- 1637-8 Rebellion by Christians in Shimabara (Japan) against Tokugawa Shogunate
- 1639 Shogunate Government closed the door against western countries (except Netherlands) and prohibited Christianity (up to 1853).
- 1840-42 Opium War in Ching (清China).
- 1844 French ship sailed to Ryukyu (Okinawa).
- 1846 British ship and French warship came again to Ryukyu (Okinawa).
- 1851 An American ship returned Japanese fisherman *Nakahama* and others to Japan.
- 1852 Russian Warship sailed Shimoda (下田).
- 1853 American Commander M. Perry arrived at Uruga (浦賀) and requested that Japan be opened to trade. He visited Japan next year again to conclude a peace treaty.
- 1866 Satsuma-Choshu Allian (薩摩・長州同盟)
- 1867 Shogun Tokugawa Yoshinobu returned political power to the Emperor.
- 1868 Battle of Toba-Fushimi (Boshin War 戊辰戦争 begins.)
Separation of Shintoism from Buddhism ordered by Meiji New Government of Tennoism, and Buddhism-destroying movement began.
Capital city Edo moved from Kyoto to Tokyo.
- 1870-71 Franco-Prussian War
- 1873 Conscription Law enacted.
- 1878 Creation of General Staff / an organ independent of the Army Ministry; thereafter, the military functioned in Japan very often separately from ordinary government administration. This was the famous independence of the supreme command.
- 1884 Sino-French War
- 1889 Imperial Constitution of Greater Japan, and Imperial House Law issued. In Article XI: "The Emperor has the supreme command of the army and navy", and in Article XII: "the Emperor determines the organization and peace standing of the army and navy."

- 1894-5 Sino-Japanese War, and Shimonoseki Treaty. Germany, France and Russia forced Japan to return Liao Tung peninsula, which Japan required under Shimonoseki Treaty. Governor-General dispatched to Taiwan.
- 1902 Anglo-Japanese Alliance Treaty signed (and abrogated in 1921).
- 1911 Hsin-hai (辛亥革命) Revolution in China
- 1914-18 World War I
- 1915 Vladimir Lenin of Russia wrote "Treatise on Imperialism."
Japan made 21 demands on China.
- 1917 Physical and Chemical Research Institute (in Tokyo) established.
Russian Revolution
- 1918-22 Japanese Army was sent to Siberia.
- 1918 First World War ended.
- 1919 Peace Conference in Paris
Versailles Treaty signed.
May 4 Movement in China (Anti-Japanese Campaign)
Weimar Constitution established in Germany.
- 1920 Post (World) War signed crisis developed.
- 1921 Premier Hara Takashi (原敬) assassinated.
Participation in Washington Conference (Four Power Treaty signed, and Anglo-Japanese Alliance abrogated.)
Nazis organized in Germany.
Chinese Communist Party set up.
- 1922 Naval Reduction Treaty (in Washington)
Japanese Communist Party organized illegally.
- 1923 Great Kanto Earthquake
- 1925 Diplomatic Relations with U.S.S.R. restored.
Law for Maintenance of Public Peace enacted (in Japan).
- 1927 China established National Government in Nanking.
Arms Reduction Conference in Geneva
- 1928 Japanese Kwantung army (關東軍) blew up train to kill Chang Tso-lin (張作霖 in Manchuria).
Mass arrest of communists (in Japan)
- 1929 Global economic crisis
- 1930 Naval Reduction Pact signed in London.
- 1931 Manchurian Incident : Japanese Kwantung Army began conquest of Manchuria.
- 1932 Shanghai (上海) Incident
Manchukuo (滿州国) established.
May 15 Incident; Prime Minister Inukai (犬養) assassinated by naval officers.
- 1933 Japan withdrew from League of Nations (in Geneva).
- 1934 Japan denounced Washington Pact.
- 1935 Prof. Minobe Tatsukichi's Theory triggered political controversy.
- 1936 Sian (西安) Incident in China
Civil War happened in Spain.
- 1937-1945 Sino-Japanese War began.
- 1938 Military conflict on border between Russia and Japan (in Manchuria)
- 1939 World War II (in Europe) broke out.
- 1940 "New Socio-Political Structure" started in Japan. Japanese Government organized "Imperial Rule Assistance Association" (大政翼賛会).
Blitzkrieg's Germany occupied Paris.
Mao Tse-tung of China wrote "New Democracy".
- 1941 Military Alliance between Japan, Germany and Italy signed.
Russo-Japanese Treaty of Neutrality signed.
National elementary school (Volksschule) system adopted in Japan.
Japanese Army occupied Southern French Indonesia.
Pearl Harbour attacked, and Pacific War began (in December).
The British Maud Committee reported that they believe it will be possible to make an atomic Bomb using isotope Uranium 235.
- 1942 Japanese Troops occupied Manila and Singapore. In Battle of Midway, Japanese navy was defeated by U.S.
U.S. troops landed on Guadalcanal island.
- 1943 The last German troops in Stalingrad surrendered (in February).
The evacuation of Japanese Army from Guadalcanal Island.
Japan lost battle in Guadalcanal.
Japanese troops Attu Island were defeated.
Italy surrendered.
- 1944 U.S. Air Force started bombing Japan's mainland (not only on military but also civilian buildings and facilities).
The Atomic Program at Los Alamos has progressed so far that a special bomber unit was established (in September) for a nuclear bomb. Some of the working scientists began to have doubts about the morality and humanity to continue their work.
- 1945 U.S.S.R. declared the war against Japan (ignoring Russo-Japanese Treaty of Neutrality since 1941). In 14 July, the World's first Atomic Weapon Test took place at Alamogordo in New Mexico.
Japanese troops on Iwajima island (硫黄島) were defeated.
U.S. troops landed on Okinawa (沖縄) and defeated Japanese troops.
Germany surrendered (in May).
Atomic bombs were dropped on Hiroshima and Nagasaki (in August).
U.S.S.R. declared the war against Japan (ignoring Russo-Japanese Treaty of Neutrality since 1941).
Japan accepted Potsdam Declaration and surrendered (in August 15).
Allied Forces landed on Japanese Mainland.
Instrument of Surrender signed on American board the Missouri.
- 1946 Emperor declared himself to be (not a God but) a human being.
International Military Tribunal for the Far East was opened in Tokyo.
(New) Constitution of Japan was promulgated.

4. Post Japanese Constitution

The New Constitution of Japan consists of the Preamble and eleven chapters comprising 103 articles, and two progressive principles which are unknown to most Euro-American constitutions. They are Articles 25 and 9.

Article 25 (Right and Duties of the People) says: *All people shall have the right to maintain the minimum standards of wholesome and cultured living. In all spheres of life the State shall use its endeavors for promotion and extension of social welfare and security, and of public health.* Indeed, Article 25 became the starting point of policies for the improvement of health care in post-war Japan. I think, it is not an over-evaluation to say that many wonderful records such as the lowest perinatal mortality rate and the longest average life-expectancy in post-war Japan were all induced by this Article 25, and furthermore by the article 9 discussed below.

Article 9 (Chapter 2, Renunciation of War) states that: *Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes. In order to accomplish the aim of the preceding paragraph, land, sea and air forces, as well as other war potentials, will never be maintained. The right of belligerency of the state will not be recognized.*

How one should read these words? Concerning this Article 9, numerous discussions took place both in the Diet and among the people in Japan, especially after the Korean War. For example: Who is the true writer of this article? Is (s)he an American or a Japanese? What kind of war should be renounced? Only aggressive war? Or, defensive war, too? What is the difference between aggressive war and defensive war? What is the definition of self-defense forces? Where is the distinction between police, self-defense forces, and the army? When the right of belligerency is neglected, can the independence of the state be kept and protected? Can pacifism be accomplished in the 20th century? How were the fates of Poland, the Netherlands, Belgium, Finland, Norway, French Indo-China, Dutch East Indies and so on during World War II and the Pacific War?

Meanwhile, the New Constitution of Japan considers the issue of peace from a new perspective completely different from the traditional ones held by western nations. Peace has long been thought of as a state achieved through the balance of armed forces among western nations. Someone said that peace is only a pause between one war and the next. On the contrary, the Japanese constitution seems to be the first in world's history to look at the problem of war and peace from the people's perspective, rather than from the governing policy. This is a view and belief of actual experience of the ravage war. The Japanese people learned from the disasters of war, and in particular from experiences as atomic bomb victims, that there is no other way to save human beings from the destruction of conventional and nuclear weapons than to call for their complete abolition.

Since the Korean War, many attempts for the revision of Article 9 were made in the name of self-defense, international contribution, and peace-keeping of the

world. Most of them were performed by the rightist politicians, and resulted in failure. The U.S., altered its post-war occupation policy and requested that Japan should rearm itself, prompting the government's re-interpretation of the words in Article 9 that self-defense forces are not military; defensive war is not a war. Furthermore they argue; pacifism is an illusion; more curious is that the constitutional renunciation of the right of belligerency is interpreted to mean that the military budget should not go over one percent of the gross national product. Despite this, about 80 percent of the Japanese constitutional scholars, however, continue to construe Article 9 to renounce all wars and to prohibit the maintenance of any significant military force.

Fortunately, in Article 96 (of Chapter 9 Amendments) there is a description that: *Amendments to this Constitution shall be initiated by the Diet, through a concurring vote of two-thirds or more of all the members of each House of Parliament and shall thereupon be submitted to the people for ratification, which shall require the affirmation vote of a majority of all votes casted thereon, at a special referendum or at such election the Diet specified by.*

In pre-war Japan, the military budget exceeded 20 percent of the gross national product (GNP), and many youngsters wanted and tried to become generals and admirals. Today, however, very little select the career as leaders in the self defense forces. By these means, post-war Japan had succeeded in financial savings to overcome the devastation and destruction of the Pacific War.

Finally, I should like to introduce several lines from the preamble of the Japanese Constitution relating to the pacifism of post-war Japan.

"We the Japanese people, desire peace for all times and are deeply conscious the high ideals controlling human relationship, and we have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world. We desire to occupy an honored place in the banishment of tyranny and slavery, oppression and intolerance for all times from the earth. We recognize that all people of the world have the right to live in peace, free from fear and want.

We the Japanese people, pledge our national honor to accomplish these high ideals and purposes with all our resources."

Philosophical Challenges to Peaceful Government in Shi'a Iran

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Abstract

The theocratic constitution of the Islamic Republic of Iran was approved in December 1979. Accordingly, the "Supreme Leader" has a strong authority over both the religious and political affairs of the nation, dominant to all branches of the state including the publicly "elected"

ones. Both Grand Ayatollah Khomeini, the founder of the Islamic Republic, and Ayatollah Khamenei, the current supreme leader, demonstrated their dominant authority over the power of the elected President as well as the national parliament and have intensified the sociopolitical conflicts in Iran since the last presidential election in June 2009. Interestingly, the underlying causes of the current sociopolitical situation in Iran may be found in the philosophical and historical reasons for the division of the Shi'a and Sunni traditions of Islam. First, Shi'a, contrary to Sunni, believes that only Allah, the God, may choose his vicegerent on Earth, and therefore no one else has a choice in the matter. This belief is based on numerous narrations in Shi'a Hadith which describe that the prophet had "selected" his cousin Ali as his successor; however, after the prophet passed away, Abu-Bakr was "wrongly elected" as the first of the four Caliphates to rule over the Muslims. Secondly, Abu-Bakr was only a political leader and would not impose himself on people as the religious intermediary with God. However, the Shi'a view is that Ali should have continued to lead the Muslim nation ("umma") in both "religious and political" affairs, as the Prophet did. This integration of religion and politics lies at the heart of the political philosophy and the foundation of the Islamic Republic of Iran. Such an interpretation of Shi'a requires that both political and religious affairs be controlled under the jurisdiction of God through the "chosen" Imam. According to the philosophical speculations and interpretations of the Shi'a scholars in the Islamic Republic of Iran, "God would not leave people without an Imam, and in his absence, a rightful successor (the "Supreme Leader")". In this paper, the philosophical framework for such an interpretation and its repercussions on the institution of democracy and peaceful government in contemporary Iran is discussed. By analyzing the underlying ethical theory in Islam, based on pluralistic prima facie ethical obligations, we may realize how the political virtue of protecting the Islamic State may overshadow all other ethical virtues in the ensuing sociopolitical environment.

Introduction

Following the success of the revolution of the Iranian people in overthrowing the royal Pahlavi dynasty, the theocratic constitution of the Islamic Republic of Iran was approved in December 1979. With further revisions to the constitution, soon the "Supreme Leader" became responsible for the ultimate delineation as well as supervision over the major policies of the nation, with full power to assure that all bodies including the legislative parliament, the judiciary system and the executive government would follow the Shi'a Islamic rules and principles. This concept is often referred to as "Velayate Motlagh Faghih" meaning "absolute providence of the jurist". The Supreme Leader has the power to dismiss the President if he wants to, and can also prevent from the final approval of any law by the parliament through his control over the so-called Guardian Council, a powerful body of 12 members that decides whether parliament approved bills may become law, and who is eligible to run for president or the parliament; therefore, all "to be elected" officials are effectively screened for their loyalty to the "Supreme Leader".

The current population (2012) of the Islamic Republic of Iran is about 75 million 89% of which are Shi'a Muslims, 9% are Sunni Muslims, and 2% are Zoroastrian, Jewish, and Christian. The other minority is of Baha'is with an estimated population of 300,000 in Iran whose religion is not accepted as legitimate by the Iranian constitution and therefore its followers may be persecuted by law whenever discovered.

The Shi'a religion has an overwhelming influence over all aspects of life in the Islamic Republic of Iran, including law and ethics. The followers of Twelver Shi'a in Iran consider themselves the "followers" of Ali, the first male convert to Islam, who was the cousin and son-in-law to the Islamic prophet Mohammad. Shi'a essentially means "follower" in Arabic. Ali became the fourth Islamic Caliphate (ruler) after the prophet passed away in the year 632, and ruled over the Islamic nation from 656 to 661. However, Shi'a recognizes him as the first "Imam" and his sons as the second and third Imams and then their descendants as the remaining Imams. Shi'a is based first on the teachings of the Quran, the holy book of all Muslims, and second on the "messages" of the prophet of Islam, Mohammad, as well as Ali and other Imams, carried through Hadith. Shi'a favors Hadith attributed to Mohammad and Imams, and credited to the Prophet's family and close associates, in contrast to the Sunni traditions which are largely narrated by the Prophet Mohammad's companions, whom Sunnis consider as trustworthy.

Shi'a, contrary to Sunni, believes that only Allah may choose his vicegerent on Earth, and therefore no one else should have a choice in the matter. They believe that God's representatives including the Prophet as well as Imams and their successors could not be elected by common Muslims. Shi'a believes that there are numerous narrations where the prophet selected Ali as his successor. The Shi'a in Iran believes that Ali was the first of the "Twelve Imams", hence called Twelver Shi'a, who were the rightful successors to Mohammad. The Twelfth Imam did not die but became hidden only to rise again as the "messiah" who will reestablish the Islamic rule after chaos has taken over; in his absence, the rightful successor is identified among religious clergies who can make the legitimate decisions ("ijtihad") based on Islamic law "sharia". The "Assembly of Experts" may thus identify the "Supreme Leader" as the legitimate vicegerent of God on Earth. Accordingly, Shi'a in Iran presents a completely independent system of religious interpretation and political authority in the Muslim world. According to this view, during the occultation of the last Imam the Supreme Leader should rule over the nation and only he can rightfully interpret the Islamic law (Shariah) for political guidance of the nation. Therefore almost all religious, ethical, political and other decisions in the Islamic Republic of Iran ultimately depend on the interpretations of the Supreme Leader from Islam. The decrees made by the Supreme Leader over religious as well as political affair are considered as the legitimate source for decision-making by all authorities in the Islamic Republic of Iran.

The philosophical foundations of the ruling Shi'a in the Islamic Republic of Iran

The underlying ethical philosophy of the ruling Shi'a in the Islamic Republic of Iran cannot be categorized simply as deontological, focused on actions, or teleological, focused on consequences. Most readers would be surprised to know that generally Islam and especially Shi'a follow a third category of ethical thinking which is mainly based on prima facie obligations; there is a similar school in Western philosophy that has been made popular by the British philosopher W.D. Ross (1877-1971). Such a moral philosophy is the main determinant of the moral status of decisions taken over both religious and political issues of the nation, which are tied in a non-secular way of governance in the Islamic Republic of Iran.

Moreover, the sociopolitical "consequences" of actions may receive considerable attention by the ruling clergy. However, this does not mean that a "utilitarian perspective" exists; the "consequences" of actions are mainly important in the way they may influence the strength of the "Islamic State", including the "image" that it projects to the inside and outside of the country. The "action" with the highest moral priority is therefore the one that strengthens the Islamic state and/or projects a rightful "image" of it. Thus, the underlying ethical theory is not purely deontological. Actions are not simply divided into right and wrong; each person at any moment may have a number of obligations some of which are more important than others. A Muslim may decide to perform various actions he is obliged to and to refrain from others that are to be avoided, based on a proper ranking of those obligations. An obligation can be overridden by a more important obligation, which is basically the concept of prima facie obligations. There are various ranks for the varied obligations a Muslim is bound to do, or "not" to do (to refrain from doing). Generally speaking, from a religious/ethical standpoint all actions are basically classified into five broad ranks as the following:

- 1- Wajeb (Fariza) refers to obligatory actions which must be done, when possible.
- 2- Mostahab refers to good actions that had better be done, but usually are not obligatory.
- 3- Mobah refers to neutral actions with a neutral ethical status, neither good nor bad, so that there is no obligation or duty to do or to refrain from doing these actions.
- 4- Makruh refers to bad actions that had better be avoided but are not fully prohibited.
- 5- Haram refers to prohibited actions which must be avoided, if possible.

This classification is only a general guideline for overall decision-making. Under given circumstances, some actions belonging to a certain category, may belong to a different category, if the circumstances change. The circumstantial nature of moral decision-making and the "moral risk" in making the wrong choices at the wrong time are thus emphasized. For instance, eating pork in Islam is well recognized as forbidden (haram) but in the case that the life of a Muslim depends on eating pork, for example when no other food is available and he may starve to death, it may be OK (mobah), or even required (wajib) to eat pork at an amount needed to sustain life.

In this instance, to sustain the life of a Muslim is more significant than to avoid eating pork.

Moreover, at any given time, a Muslim may be under more than one obligation and sometimes these obligations may be in conflict. Because most obligations are not absolute or categorical, as in Kantian philosophy, there may be instances when some obligations are in conflict with each other. For example, a Muslim must obey parents and must obey the religious directions too; what if the two are in conflict over some matter? This creates situations where one may need to take a "moral risk", similar to what Ross mentioned in his ethical theory. A Muslim can take the risk to make a decision by him/herself or "follow" the decree of a clergy (faqih) who has completed years of studying and training to attain "ijtihad". That is why in difficult situations, Muslims look for a "decree" to resolve such conflicts. A decree in Shi'a comes from a "mujtahed", a Shi'a clergy who has studied extensively the Islamic law "sharia" and knows how to reach the right decision after ranking the various obligations under different circumstances and specifics of the situation. Actions may be judged as being ethical or unethical based on the circumstances surrounding them; if extended to an extreme situation, this may seem to merge with ethical relativism. An example is the report of winning cash through "predicting" horse racing results in the Islamic Republic of Iran. Shari'a has banned gambling and Quran has described gambling as evil and unclean. Gambling is generally considered as illegal by authorities and those found guilty of it in the Islamic Republic of Iran may be sentenced to flogging and jail. However, new decrees have permitted many race-goers to "legally" put money on the horses as long as they are "predicting" through official channels. According to these decrees, all forms of gambling are "haram" (forbidden) in Islam except under the three sports of horse racing, camel racing and archery, under certain conditions. However, only the archery contestants and riders of the horses or camels in the races would be permitted to bet. Thus, to make it possible for spectators to take part, the Equestrian Federation of Iran sought permission from senior clerics and received the permission to provide betting on horses under certain conditions whereby jockeys authorize the horse-racing committee to place bets for other people on their behalf.

Discussion

The ethics of the Islamic Republic of Iran is that most of the moral obligations are not absolute, as opposed to the Kantian ethics, and exceptions are allowed depending on the circumstances. One of the most important obligations of any individual would be to preserve the Islamic state and other obligations may become secondary and prima facie to that and so be dissolved. The clergy politicians may justify some of their actions by referring to the following verses in Quran:

Quran 9:3: *"Allah and His Messenger dissolve obligations."*

Quran 66:2: *"Allah has already sanctioned for you the dissolution of your vows."*

Quran 4:142: *"Surely the hypocrites strive to deceive Allah. He shall retaliate by deceiving them."*

An action done in good faith which represents the legitimate right of an individual according to law, is not permitted if there is a possibility of a damage to the Islamic state or its image. In fact, the Supreme Leader has referred to the "priority" of preserving and protecting the "Islamic State" as justification of so many controversial decisions that were made during the demonstrations in 2009 following the June presidential election. In many such cases, the possible "consequence" of an action, weakening the state, is emphasized as taking precedence over the "deontological" aspect of that action itself. However, this is far from "utilitarian" views that are commonly implied by theological theories. Islam holds each individual ultimately responsible for all his actions to God, and not to the people. The Quran says, "...We ordained for the Children of Israel that if any one slew a person - unless it be for murder or for spreading mischief in the land - it would be as if he slew the whole people. And if anyone saved a life, it would be as if he saved the life of the whole people...." (Quran 5:32)

Another important distinction in the Islamic Republic of Iran is in the integration of religion and politics. Choosing a secular stand, a belief in separation of religion from politics, is a big taboo in the Islamic Republic of Iran, and may even lead to persecution by law. The Islamic Republic of Iran seems to be unique in implementing such a strong integration of religion and politics. Iranian peoples come from a wide variation of ethnic, cultural, linguistic, as well as religious beliefs. Many minorities have complained of sociopolitical injustice for their specific religious affiliation. The anti-secular stance of the government in the Islamic Republic of Iran has added to the general challenge of respecting the "universally equal" dignity and value for all humans irrespective of their religion. This may be a challenge to most Islamic philosophers to portray the equality of humans in the original teachings of Islam. Quran basically regards monotheist religions highly and refers to their texts with a lot of respect. These include Christianity, Judaism and probably Zoroastrianism. Quran defines Islam as "surrendering oneself to God" and in this way does not differentiate between the religion that Muhammad brought and those monotheist religions before him. The following verse refers to this fact, and also states that other (polytheist) religions would never be accepted by the God:

Quran 3:85: *"If anyone desires a religion other than Islam, never will it be accepted of him and in the Hereafter he will be in the ranks of those who are losers."*

Unfortunately, some readers have interpreted this verse to mean that non-Muslims will not be accepted by the God. In this case, obligations that a Muslim has towards another Muslim, such as not to lie to them, may not hold as strongly to non-Muslims especially those without a recognized religion. The relevant point for the Islamic Republic of Iran is the ethical value of Muslims versus non-Muslims. Essentially, only certain religions are recognized by law in the Islamic Republic of Iran, which include Christianity, Judaism and the Zoroastrian religion. Followers of other religions may be considered as Kafer (unbeliever, disbeliever, an atheist) or Moshrek (polytheist) and as such may be deprived of equal human

rights in the society. In the Islamic Republic of Iran, everyone has to be formally registered as belonging to one of the recognized religions, Shi'a Islam, Sunni Islam, Judaism, Christianity, and Zoroastrian. The Bahai minority in Iran with an estimated population of 300,000 is not a recognized religion and therefore if discovered, they may face severe discrimination and persecution by law. The legally recognized minorities are allowed to live and practice their own religion almost freely; however, they may still not receive a fully equal respect, value and religious freedom as Shi'a Muslims. Such a view has been reflected in some shari'a laws, including those of qisas (retaliation law), and are generally a point of concern for equal human rights for all Iranians.

It may be difficult to make a broad statement on the standpoint of Islam on human rights in general. It is helpful to note that a person's "rights" may be translated into "duties" or "obligations" on others to treat that person in a certain way. Thus Muslims may not be obliged by the same duties towards non-Muslims, as they are towards fellow Muslims. An action that is haram towards a Muslim may be makruh or mobah towards a non-Muslim, and an action that is wajib towards a Muslim may be only mostahab or mobah towards a non-Muslim. Accordingly, the view of human rights in the perspective of the obligations of a Muslim individual (or an Islamic state) towards other individuals could be totally different. The United Nation's Human Rights reports on Iran especially commonly give a grim view that is confirmed by hundreds of reports in the news and other media.

The fact is that the socio-cultural experience of more than 3 decades of life under the Islamic Republic of Iran for the majority of Iranians has not been a positive one. Mental health problems have been estimated to exist in more than a third of Iranians; drug addiction rates have been steadily worsening, and especially violence and aggressive behavior have become more and more commonplace. Carl Rogers has done a seminal work on the significance of developing "congruence" between the true feelings and wishes of people, and the image they project to others. According to Rogers, people treated with "conditional" regard may suppress or deny their true feelings and as a result "incongruence" develops which causes a sense of not being true to oneself which then causes low self-regard, unhappiness, neuroticism, and negative feelings. The socio-political atmosphere in the Islamic Republic of Iran follows such a pattern whereby in order for the people to get by in ordinary life, they need to project an "acceptable" image to the government.

A final point is the issue of "virtue ethics" which is explicitly or implicitly mentioned in the justification of many controversial decisions made by the Supreme Leader. There are a lot of validated references to the simple way of life of both Grand Ayatollah Khomeini and Ayatollah Khamenei, far from the common conceptions people may have from politicians corrupted by power and wealth. According to this view, the Supreme Leaders were religious freedom fighters who sacrificed their personal lives in the carrying out of God's wishes for the people and have never asked for more than the God's satisfaction in following their Islamic obligations. However, the facts of the matter, confirmed in the many reports by the United Nation's Human Rights observers,

do not validate a significant impact on the betterment of social life that can be ascribed to the virtue ethics of the leaders. The widening political gap between the "current" and the "former" elites in the government speaks up for the increasing pressure on everyone to follow and conform to the rule of dictatorship. Iranians doubt that even the most virtuous officials could be trusted with unlimited power in long term.

There have been some recent suggestions to change the constitution so that a national referendum would not be needed to choose the President, so that the parliament would pick up the most appropriate person in line with the views of the Supreme Leader. This they claim would reduce frictions with the Supreme Leader who must have the final word on all important decisions. Looking back at the philosophical views of the ruling Shi'a in the Islamic Republic of Iran about the Supreme Leader as God's vicegerent, it is not difficult to see why.

Conclusions

The preceding review and analysis of the philosophical views of Iranian Shi'a regarding legitimate governance, and the discussion of the current conditions in Iran that followed, we can come up with the following conclusions:

The experience of the Islamic Republic of Iran in integration of religion and politics with the ultimate authority over all government affairs in the hands of the Supreme Leader has not been successful; this failure is especially apparent in the inability of the government to establish peace and democracy and to respect the human rights of all its citizens. It would also be difficult to support any similar attempts to integrate religious thinking into policy-making in a socio-culturally diverse community, even if the majority of people seem to be followers of a single religion. This is because not all followers of a religion have the same interpretations and speculations that an elite group in the government may have regarding what their religion would prescribe in a certain situation. The ensuing problems in the community may hurt not only the people, but also the image of the religion and its followers.

There is no way to establish whether the philosophical foundations of the Shi'a in the Islamic Republic of Iran are a true reflection of the views of Islam in general or Shi'a in particular. Most of the Shi'a scholars in other countries do not agree with the anti-secular views of the Iranian Shi'a authorities. This should not come as a surprise because such views are based on a great deal of "speculations" by the ruling clergy, and not based on hard evidence that can be tracked to the teachings of the Prophet Mohammad. Sunni scholars have four schools of their own interpretations of what the teachings mean for the life of the people in the contemporary era. Academic discussions of such differences could be very interesting and could result in a beneficial dialogue among followers of diverse theories but it is probably better not to enforce any single view to the life of a diverse nation in need of solidarity.

Islamic philosophers should be encouraged to work on the basic principle of "equal rights and universal dignity for all humans irrespective of their religion". A few possible ways to proceed with such an incentive include: the Quran teaching of "there is no compulsion in religion";

the belief that every human being is born in a state of "surrender to God" (Islam) and every human has the potential to surrender himself/herself to God (Islam) through his/her lifetime; and finally that a "more important" obligation of our era in a globalized world is to accept the equality of all humans compared with the *prima facie* obligation to value Muslims more than others.

"Virtue ethics" in principle may suffer from a basic weakness in that it validates the virtues that develop in a virtuous person; self-confirmatory bias may create a small deviation which becomes too wide over time. Many of the current undemocratic officials in the Islamic Republic of Iran were themselves the victims of oppression of the previous political regime which they fought in the hope of establishing peace and freedom. However, they are now facing a lot of criticism over their own treatment of the people and other veteran revolutionaries; it appears that they have not been loyal to their religious virtues. Apparently, we always need independent principles to help assure our virtues are in line with universal values.

I hope these discussions would provide an opportunity to a more open discussion of the real challenges that Islamic philosophers face in their contribution to ethical and bioethical thinking in the 21st century.

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"Transformative Dialogue" for the Concerning Parties in the Pursuit of Conflict Resolution in Bioethical Field

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Introduction

There seems to be various conflicts in the bioethical field. Recently, one of the conflicts, which have been receiving a great deal of attention, has become the conflict between doctors and patients in healthcare ethics included in bioethics. The conflict emerges due to the differences among the doctors and patients in the dialogue for making a decision on treatment for patients. The question is, why do their intentions differ? These reasons are the differences in "Culture" or "Value" in which they represent, and the "Meaning of Words," such

as the meaning of RISK, HEALING, etc. Too often, we take our background differences for granted and led into assuming that we cannot really resolve the conflict.

Then, two approaches must be effective for the successful resolution; the first approach is the "Transformative" approach which has been put forward by Bruce B. Bush and Joseph P. Folger in 1994/2005. The second one is the "Narrative" approach that has been introduced by John Winslade and Gerald Monk in 2000/2008. Both of the approaches have been used in "Mediation."

Based on these mediation approaches, we will consider "Transformative Dialogue" for the concerning parties in the pursuit of conflict resolution in bioethical field.

Conflicts in the Healthcare Field

In recent years, conflicts between patients and Doctors (healthcare professionals) are more and more frequent; one of the reasons is an insufficient or inappropriate communication or interaction with the healthcare professionals (Tereanu and Quattrocchio, 2011).

Mediation

"Mediation" is one of the most appropriate methods for peaceful conflict resolution. Mediation facilitates an independent agreement making of the concerning parties, which can be sustainable and satisfactory for both of parties.

Christopher W. Moore (2003) defines mediation as, *"The intervention in a negotiation or a conflict of an acceptable third party who has limited or no authoritative decision-making power but who assists the involved parties in voluntarily reaching a mutually acceptable settlement of issues in dispute. In addition to addressing substantive issues, mediation may also establish or strengthen relationships of trust and respect between the parties or terminate relationships in a manner that minimizes costs and psychological harm."*

The mediator is defined as a third party, a person not directly involved in the dispute (Moore, 2003).

Transformative Mediation

The concept for Transformative Mediation is shifts both of "Recognition" and "Empowerment". Dialogue process that includes the interaction of both elements would provide both of the concerning parties a "Transformation from weakness to strength" toward re-building of the relationship. Bush and Folger (2005) define conflict as "crisis in human interaction", and describes as, *"First, conflict generates, for almost anyone it touches, a sense of their own weakness and incapacity. For each of them, conflict brings a sense of relative weakness, compared with their pre-conflict state, in their experience of self-efficacy: sense of lost control over their situation, accompanied, by confusion, doubt, uncertainty, and indecisiveness."* *"At the very same time, conflict generates a sense of self-absorption: compared with before, each party becomes focused on self alone — more protective of self, and more suspicious, hostile, closed, and impervious to the perspective of the other person."*

They suggest dynamic shifts with two elements for the successful resolution.

"Empowerment" (Bush and Folger, 2005): *"The restoration to individuals of a sense of their value and strength and their own capacity to make decisions and handle life's problems."*

"Recognition" (Bush and Folger, 2005): *"The evocation in individuals of acknowledgement, understanding, or empathy for the situation and the views of other."*

In an empowerment shift, the party moves from self-absorption to greater strength, and in a recognition shift, the party moves from self-absorption to greater understanding of other (Bush and Folger, 2005). They call them "Moving from weakness to strength" and "Shifting from self-centeredness to responsiveness."

Narrative Mediation

While Narrative Therapy has become relatively mainstream in Family Therapy, Narrative Mediation is still a relatively new and unexplored phenomenon in the field of mediation (Hansen, 2003). Narrative Mediation is a dialogue process with "Deconstruction" and "Externalization" which provides both of the concerning parties a cognitive transformation (new views or meanings) and opportunity to re-build a new relationship called "Alternative Story."

The worldview of Narrative Mediation is that people live their lives according to stories as socially and culturally constructed, therefore, conflicts are considered as what emerged by people's shared social and cultural fabric rather than people's inner drives and interests (Winslade and Monk, 2000). Thus, Narrative Mediation makes use of "Deconstruction" and "Externalization."

"Deconstruction (Deconstructive Questions)" (Winslade and Monk, 2000): *"Inviting the parties out of conflict story and into learning how they have been caught in the web of the dispute. Deconstructive conversation loosens the authority of a dominant way of thinking and opens the door for different ways of thinking."*

"Externalization (Externalizing Conversations)" (Winslade and Monk, 2000): *"Introducing a way of speaking about the conflict that interrupts blame and guilt and helps parties to dis-identify with the conflict itself. It promotes a clear separation between people and problems, and then invites a re-evaluation of their relationship with problems."*

Transformation in Narrative Mediation can be considered as "Transformation from a dominant way of thinking to different ways of thinking."

Conclusion

In the context of health-care ethics, the two kinds of transformation are equally essential to conflict resolution. However, these two kinds of transformation also have their limitations — they must be difficult for healthcare conflicts involved in the context of social-culture and religion. The concepts of Transformative and Narrative mediation are IDEAL to these conflicts. Therefore, we need to conduct further research on how to improve and modify the two concepts so that they could be applicable in those contexts.

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Peace of Mind for Peace of All

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In this 21st Century, we are facing great catastrophes all around us. We noticed the sudden calamity and disasters all over the world. These events effect humans physically and mentally. It is the purpose of this paper to present the effective way for people to deal with the situations that we are facing in this century. In discussing the importance of self-knowledge, and knowing reality of the self of great thinkers such as Socrates, Montaigne, in relation to the three characteristics of reality in Buddhism. Why does such knowledge enable humankind to attain peace from within in the mist of uncertainty and disaster and hopefully able to create peace among men?

Socrates, the leading thinker of the West, his wisdom is 'Know Thyself'. For Socrates self knowledge is the most important thing. As Plato, Socrates admirer wrote in one of his books *Gorgias*, "*The noblest of all studies is the study of what man is and what he should pursue.*" In other words, one should observe or examine oneself, as "an unexamined life is not worth living" said Socrates. What is the meaning of understanding the self? Plato used Socrates' dialectic or dialogue to bring out the innate ideas or knowledge within the self. Socratic methods in examining men's everyday opinions by means of a carefully elaborated system of question or, as Plato called dialectic. The method that Socrates used to stripping away of prejudice, the probing of superficial opinions, trying to reach to the inner self or knowledge that is innate. For the truth is in all of us, only it needs to be brought to birth. When Plato writes of Socrates as a midwife, he tells a story about the relationship between teacher and student, about education. The true

knowledge of man is innated, we only need to bring it out from within.

In *Apology* of Plato, Socrates was defending himself in court after being accused by the opposition that he corrupted the young minds of Athens and taught them not to believe in the city gods. That Socrates spent time with many young men and many other follow Socrates around Athens engaging in dialogues which Plato was among the people who listen carefully to him. Socrates stands firm upon his way of life, and explains why he lived the way he did. His task is to cultivate virtue which is an art in dialogues with people in Athens, he said he is like a gadfly, who tried to wake up people to see life in reality, able to realize the knowledge of the self in order to live well. Man should not search for fame and fortune or material gains only but to have the self-knowledge. At the end of *Apology*, Socrates said about the wisdom of life that all men should follow: "*....and if I say again that the greatest good of man is daily to converse about virtue, and all that concerning which you hear examining myself and others, and that the life which is unexamined is not worth living*"¹⁵

The above paragraph is one of the most important passages in all philosophy, as it shows the notion that philosophy deals with thinking and more self-examination. Socrates believed in virtue and self-knowledge, even he was condemned to death by the jury of Athens, but he welcome death. Some Existentialists thought that the dilemma of life and death, Socrates choose to die, Socrates knew very well that the way he defended himself in court, not the majority of juries will be on his side, but he said what he wanted to say. Nietzsche even talk about the concept of 'super-man' (the superman is the ideal of someone who has mastered the practice of overcoming himself), Socrates is the one example who is ready to die. Plato's *Crito*, shows Socrates is ready to die as he never regret of what he did and did not want to escape from prison that Crito suggested. And also in his own words at the end of *Apology*, "*Wherefore, O judges, be of good cheer about death, and know this of a truth – that no evil can happen to a good man, either in life or after death.....The hour of departure has arrived, and we go our ways - I to die and you to live. Which is better God only knows.*"¹⁶

Socrates departed this world in peace, after drinking hemlock only his friends mourn over the death of the greatest thinker. Great minds are never afraid of dying. Socrates knows well what was his duty, he did it well and ready for anything. One who knows himself can always face anything in life and that he believes in his own goodness that 'no evil can happen to a good man, either in life or after death.'

Another great thinker of the West that was concerned about the knowledge of the self is Michel de Montaigne (1533-1592). At the age of 38, Montaigne retired from public life that he used to serve as a courtier and diplomat. Then he devoted the remainder of his life to writing, he was among the very first to write in short form of *Essays*, which turn out to be great influential and

15 Plato, *Apology*, 41d

16 Ibid., 42a

impressing great minds such as Shakespeare, Pascal and Nietzsche.

Even though Montaigne started questioning things and being a skeptic, that he cannot know anything with absolute certainty. This in consequence led him to be open minded, that we should be tolerant of the differing opinions and customs of others, especially in matter of ethics and religion, we should base our judgment upon what seems to be born by experience, as it is our main guide for knowledge. **We should strive for self-knowledge, since it is only through self-examination that we can hope to understand our nature and needs, as so be happy and fulfilled.**

He wrote Four Rules to fulfill one's life. First, examine and carefully observe oneself in all directions. Second, understand and accept one self. Third, understand and accept others. Fourth, live accordingly to one's own nature. These Four Rules start from something simple to more complex. That it is hard enough to know about oneself or self-examined, or 'Know Thyself' of Socrates as the First Rule, and for the Second Rule is to understand and accept oneself is even harder. Many of man's problems come from not knowing who we are and not being able to accept of what we are. This leads to many problems and conflicts among men.

From the First Rule, through observing and questioning about ourselves lead us to know the purpose of life, why we are here? What do we plan to do with our life? Without knowing who we are, we cannot know the direction of our life and able to do things with confidence. But to know ourselves clear and real are very difficult and even more difficult to come to the Second Rule that is to accept ourselves. As we all have good and weak points, to know both sides and able to accept them is very hard. Painful experience can prevail. Once when one overcomes the painful stage and able to accept oneself, one can reach to a certain point of blissfulness, and able to go on to another stage, the Third Rule: to understand and accept others.

Montaigne is a man of wisdom, his writing showed great introspection within himself with sense of humor that he is able to understand human nature very well. He tried to bring us to realize how to understand others. That is one has to put oneself in one's own shoes first then able to know what it is like to put oneself in another people shoes. The Third Rule comes after the second, when one knows oneself and able to accept oneself, then one is able to accept others. This is very logical. And the Forth Rule, to live accordingly to one's own nature. When one learns well of one's nature, one can achieve whatever one wants to do in this life, then able to satisfy and do well in life. From knowing how who we are, we can live this life at best. Peace from within can easily be attained, from these Four Rules.

Mindful meditation in Buddhism has the same method of 'Know thyself.' But in mindful meditation the observation has to be continuous at all times. By observing ourselves (mind-body) in different actions in time and space such as walking, sitting, standing, lying down. For example, while sitting one has to observe the movement of one's tummy, the rising and falling of the stomach and observe the state of mind in each moment, depends on which is more noticeable. This is the

reflection of the self through the knowledge of the body and mind. Knowing the body means to notice different position of the body, knowing the mind means to notice the calmness, peaceful, distress, anxiety, hatred or anger that appear within the mind.

If one observes the body-mind at all times continuously one can realize the truth or three characteristics of reality: first, the changes of all things (*Anicca*), second, the suffering (*Dukkha*) and no-self (*Anatta*). Accordingly to Venerable Mahasi Sayadaw, great master of Insight meditation from Burma taught how to go about observation in meditation:

"While eating, the meditator notes the taste and knows when the taste disappears. The taste which appears afresh and disappears is, therefore, impermanent. The impermanent nature of taste is very plain. However pleasant the taste is, it remains on the tongue only for a short while before it disappears. As with the taste, the material quality of the tongue on which the taste manifests disappears simultaneously. Thus when the taste is seen to be impermanent, the material quality of the tongue is seen also to be impermanent."¹⁷

This kind of realization of the impermanence of taste comes from mindful meditation. The realization of the four elements (water, air, solid, and fire or energy) of the body's composition can also be realized. These realizations come from knowing the change from within, such as realizing the movement of the bloods that flow like water, or the moment of air flow lightly up and down within the body, or the solid elements such as bones appear so clearly or the warm movement of the flow of energy within the body. All these characteristics of movements came so clearly through a certain stage of mindful meditation, which enable the meditator to realize **the impermanence** of the body-mind that is happening at all times, at every second of our breath.

For suffering (*Dukkha*): this concept of life had been realized by the young prince Sitthata (name of the Buddha at young age). Before the prince escaped from the palace, he never experienced any suffering, no form of sickness, or death present before him. After he experience the outside world which is full of pain, sickness, old age and death, these truth of life struck him hard, to the point he tried to find way to end suffering. Suffering may be interpreted as pessimistic view of life, but it can also turn to be a very optimistic way to look at life from understanding it and able to overcome it from within.

According to Venerable Mahasi Sayadaw, in the Commentary definition of suffering, "it is suffering because it is fearsome."¹⁸ That all things are ever arising and perishing, and so it is fearsome. Most people imagine things to be enduring and stable. When they realize that things do not endure even for a second and are constantly dissolving, they can no longer see any goodness in them.

Then if they discover the facts of life: 'suffering' and learn to overcome this fearful life through meditation. Through mindful meditation one can realize things as they are, and able to accept life as it is. When one

17 Venerable Mahasi Sayadaw, *The Great Discourse on Not Self-examination*, p.97.

18 Ibid., p.99.

understands the suffering of life, one can overcome the suffering itself. One can see things clearly, not under any illusion, one is beyond any kind of suffering, able to see things from the bird's eyes view, and able to see the whole picture of life through.

The third concept of reality, the concept of no-self: that the self is in the process of change both mind-body. This concept is very difficult to understand as we always attach or identify ourselves with our body, our name, our positions and all of our belongings. These are our perceptions of the self. The Buddha said "All perceptions, whether past, future or present, internal or external, gross or fine, inferior or superior, far or near should be seen with one's own knowledge, as they truly are, thus: 'This is not mine, this I am not, this not myself.'¹⁹

Venerable Mahasi Sayadaw explained in his writing about the nature of perception during mindful meditation that the perception which recognized sense objects a moment ago did not reach the present moment; they disappeared even while recognizing that they are impermanent, suffering, and not-self. Nor that the perceptions which are recognizing and remembering things now also perish which actually recognizing; or the perceptions which will recognize things in the future will also vanish at the time of recognizing and they are therefore impermanent, suffering and not-self.²⁰

This idea of no-self is like one of the British Empiricists, David Hume. He wrote, "*When I enter most intimately into what I call myself, I always stumble on some particular perception or other, of heat or cold, light or shade, love or hatred, pain or pleasure. I never catch myself at any time without a perception and never can observe anything but the perception.*"²¹

There is nothing to the mind but these perceptions. Hume continues, do we have any idea of a self, that the self or person is not any one impression, but our several impressions and ideas. The self then is just a bundle of perception, like role of film, that one cannot pin point which part of the film is the self, but only perceive one perception after another. Then there is no such thing as self identity. Our idea of a persistent self is simply a result of the human habit of attributing continued existence to any collection of associate parts like the idea of the necessary connection of cause and effect.²²

Why is the understanding of the three characteristics of reality important to attain peace of mind? If one can realize the impermanent of all things, one will not attach to one's belongings, or person. This can help one's attitude towards seeing the world by realizing that material things can always change at all times. Imagine most of us who leave the house in the morning, will always expect to return at the end of the day. But anything can happen like what happened in Fukushima or Christchurch in 2011. But if one has in mind, nothing stays the same, not only the material world outside change but the inner self are also changing every second. Every time we breath in and out, our heart, our thoughts are changing all the time as well. All is in the

process of change. If we keep this in mind or being aware of all the changes at all times, we are ready for any changes. Besides, one can eliminate one's greed, not to cling to material world, as things are always changing.

Besides the awareness of material changes, one can be aware of the changes that can happen to our love ones as well. Being aware of all these changes, led one simply accept whatever will happen, without much distress. Then peace can be easily attained.

Conclusions

We can see that self-knowledge is the key to live this life in reality. Know thyself of Socrates, or the Four Rules of Montaigne, and mindful meditation that lead to know the three characteristics of all things. All are interconnected. In mindful meditation one observes oneself every second, and finally gains the knowledge of reality, that is impermanence, suffering and no-self. These are keys to bring us to have a new attitude towards the world. Able to see things in reality, in seeing this way one can overcome the hard suffering facts of life, the lost of love ones, the property and all belongings enable to live this life fully, in being aware of the reality itself. Peace of mind can easily attain by the knowledge of this self and reality of all things.

As Venerable Matthieu Ricard (a Buddhist monk who had a promising career in cellular genetics before leaving France to study Buddhism in the Himalayas thirty-five years ago) expressed in his writing the following, "*Meditation makes it possible to see the events of your life within a larger perspective. It allows you to experience them with greater serenity without falling into indifference, to accept whatever happen without a sense of resignation and to envisage a future on the basis of altruism and confidence. Thus little by little, through training the mind, you can change your habitual way of being. You can develop a more accurate understanding of reality and finer understanding of the laws of cause and effect, so you will be less shaken by the drastic reversals that inevitably occur in people's lives and less carried away by superficial successes. There are the signs of a genuine personal transformation, a transformation that will enable you to act more effectively in the world you live in and contribute to building a wiser and more altruistic society.*"²³

We can see that through self-knowledge and meditation one can attain peace of mind and enable us to extend loving and kindness to peace of all as well.

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A Journey towards Peace: An Example of Cambodia Youth Peace Ambassador Club

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I recently graduated from my Bachelor degree in Education. Although I am a Cambodian UNESCO Youth Peace Ambassador, I am merely an ordinary youth who is striving her best to contribute to peace. This is how the journey begins.

Let me start by sharing my experience in Hiroshima, the place where I trained to be a UNESCO Youth Peace Ambassador trainee. I had never been involved in any extra curriculum activities beside those mentioned in the school nor had I been traveling abroad. I was at my late nineteen when I first traveled overseas. I thought it was normal despite the fact that many Cambodian youths especially women are not allowed to travel without their parents'. The first place I flew to was Hiroshima, Japan. I remember precisely that it was on 8 October 2010. The purpose of visiting was to attend the first International UNESCO Youth Peace Ambassador Training Workshop. The reason of my excitement certainly was being able to be on the plane regardless of other purposes.

Upon my arrival in Hiroshima, I realized that I was wrong. There were two main lessons I learned. First of all, youth from around the world traveled to pursue extra-curricular activities. The purpose is to extend networks and to learn from real practices. Some were around 14 or 15 years of age. However, they possess fluent skills in presentation, creativities and the like. More than this, the bitter history of Hiroshima described by the atomic survivors led me to a deep thought of how ignorant I had been towards my beloved country and myself. Here comes the second lesson. I was asked to create an action plan applied to my country, Cambodia. I came up with an action plan entitled "Love Life, Love Peace". It was basically an action plan which was to draw people's attention towards minorities and the vulnerable especially those who are carrying incurable diseases. This was the first action plan I have ever developed in my life that I gave so much hope to activate. Nevertheless, since there were five Cambodian participants, I was asked to join the group and combine it into one action plan. At the end, we had "Youth Peace Project" (YPP), a long-term project on peace promotion, as our representative action plan.

After return, I continued my simple life – going to university. However, I always wished to have my action plan implemented but I realized that Love Life, Love Peace or YPP is too broad for me alone to initiate. Therefore, I called upon other Cambodian Youth Peace Ambassadors to discuss for the possible changes. My best friend, Rongsong Sodalín, another one of the peace ambassador trainees, and I, met and tried to figure out another practical action plan. The new action plan was

born which we named it as "Educational Peace Fair and Gala For Lives". Nonetheless, we encountered funding problems since there seemed no organization was interested to support us financially although we sent out the proposal. My assumption was "we are too new to the field." Coincidentally, we were contacted to organize a peace-sharing workshop two months before our action plan. The key person was Dr. Darryl Macer, the UNESCO Regional adviser in social and human science for the Asia and the Pacific. This gave hope to my group members and I. Again, Dalin and I drafted out the agenda and the details in the workshop. I gave a name to this introductory workshop as "Peace No Longer a Dream: New Paths to Walk On."

As two little girls, we were anxious of how to make this happen, with no conference-organizing experience and funds. We decided to contribute our own allowance and ask for charity contribution in addition to fund proposal. Certainly, the result met our hopes. There was one organization which was willing to sponsor us, the International Republican Institution (IRI). The reason was one of our members, Mr. Samith Vattanak Oudom, is an employee there. With our self-funded capital, contributions from Dr. Macer and those of IRI, we finally had this first workshop came into place.

It was held at Cambodia-Japan Cooperation Center on 29 January 2011. There were 110 participants from various high schools, universities, NGOs attended. From this, I learned that "Nothing is impossible". Therefore, I told Dalin that we had to organize the follow-up, which means our initial action plan "Educational Peace Fair and Gala For Lives" had to be on-screen. I thank Dalin and the group members who always gave me a YES answer whenever I proposed a plan. We started drafting the details again. Due to the time constraints and budget limitations, we reduced the activity to only "Peace Art Competition" followed by an "Educational Peace Fair" and a morning "Peace-sharing Workshop". With all the assistance from our advisors and patrons, we succeeded in implementing our action plan. From so doing, I would like to sustain the activities related to peace by our members. After all the consideration and discussion with all the group members, we decided to create a Cambodia UNESCO Youth Peace Ambassador club which welcomes all the Cambodian UNESCO Youth Peace Ambassador (CamYPA) trainees to join. This club serves as a platform to discuss, share and assist each other of how to implement the entire action plans, as I understand the challenges.

CamYPA faced a lot of challenges before it arrives at the present state. We now have 27 members in total. Most of us are tied up with study while some are busy with their jobs. After several meetings, I learned that it is a difficult to have every member joined the meetings. As all the activities under CamYPA are voluntary, I could only draft the necessary documents for the club with frequently-joining members. Our energetic members including Rongsong Sodalín, In Lina, Taing Kimchhe, Tin Kolmen, Nop Ponalén, Chan Sokunthea, Tan Samphoursasmey and Sun Chhorvy have been working very hard to design the club's logo, structure, objectives, mission and vision. We together worked cooperatively and after a few weeks, we had the initial draft done. The

most powerful point about CamYPA is that we have a high number of members compared to other YPA countries. Thanks to the strong network of YPA, CamYPA were invited to attend many international youth forums and events last year, 2011, including the 12th International Youth Day Celebration in Iloilo, Philippines, the 5th Asian Youth Forum in Icheon, Korea, the 3rd international Youth Peace Ambassador Training Workshop in Penang, Malaysia, the Looking Beyond Disaster Youth Forum in Christchurch, New Zealand, and the Youth Emerge in Bangkok, Thailand and VangVieng, Laos.

CamYPA have been displayed on the international stages. As I mentioned earlier, though we are still weak in term of financial support, we are not hopeless. We have tremendous power to contribute and to make our motherland, Cambodia, a better place. Within the year of 2011 and the beginning of 2012, we have another two actions implemented. One was "Peace with Nature", an action plan by Miss. In Lina and Mr. In Sophearun, This action plan was integrated with Clean-up Day of their university, the Institute of Foreign Languages on 7 March 2011. With hundreds of students, we planted trees, picked up rubbish, presented about environmental researches, and answered environmental quizzes. The other one was held recently on 8 January 2012. It was a "Youth-led Informal Teaching and Sharing" on the theme of Peace and Genocide, an action plan by Miss. Nop Ponalen and Miss. Sun Chhorvy. We went to Krang Tachan district, Takeo province to meet and discuss about our history and the future of these young leaders with 60 local students.

For the last two years, I am getting richer and richer, not financially but in terms of spiritual competency and knowledge enhancement. From being a simple Cambodian college girl to a youth peace ambassador, from a single youth peace ambassador to a group of youth peace ambassadors, I have so much instilled within me. Regarding spiritual competency, I encountered many ups and downs; I was blank of having nowhere to move on with the club; I even felt I wanted to give up everything aside. Despite the difficulties, challenges, and fluctuations in life, I have a group of people who always stay by my side. I deeply understand the meaning of peace and the happiness I could bring to people. Working voluntarily for CamYPA has also taught me how to work. I had never tried to be a master of ceremony in a workshop, yet my dream came true during the first introductory workshop. Likewise, I was an interpreter during the second International Youth Peace Ambassador Training Workshop. Interpretation is an occupation which requires a fast reflection and language accuracy, yet I have none. Therefore, I did not translate very well. It, nonetheless, was a great experience. Most importantly, I studied carefully how to form a club and is now preparing necessary documents for the club accreditation such as the constitution, the structure, and the like.

However, how is the CamYPA going to further our activities and club accreditation? To the best of my knowledge, there seem to have no UNESCO club in Cambodia. This seems strange but it is true. This could be the beginning point of our goal. We hope to be

accredited from the Cambodian National Commission for UNESCO. CamYPA could be a formal UNESCO club, so that we could process our action plans with autonomy but under UNESCO consent. By now, CamYPA is preparing the required documents for the club accreditation, having it as a thoroughly summarized report sent to UNESCO Bangkok, the original institution where the CamYPA was born. Considering the activities, CamYPA will continue working to implement the action plan in our hand. We will have a "Charity for Peace" event at an orphanage and another peace workshop in March 2012. Most importantly, we are planning to host an international event on the International Peace Day, 21 September 21012

Confucius said "a journey of a thousand miles starts with a single step". The journey of CamYPA is comparable to a legend to me; I have never dreamed of having today. From the beginning until now, CamYPA has never forgotten our initial dream – a peaceful world which starts from the new generation and full of smiles and laughter. In doing so, CamYPA is working toward the club accreditation and continues implementing our action plans with our soulfully team spirits. We firmly believe that our little contribution will add up for the best.

Should Japan abolish the death penalty? No definite answer exists yet

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Abstract

How should the Japanese death penalty system stand in the future? While banning the death penalty has become a global trend, Japanese public opinion still supports it, and the government continues to strongly insist retention of the system. Despite worldwide criticism towards Japanese opinion, until very recently have been no reductions in death penalty sentences or executions. Both abolitionist and retentionist countries have strong arguments to support their opinions, thus there is no decisive argument that overwhelmingly refutes others. Consideration for the feelings of the murder victim's family is significant, and there are certain actions perpetrated by the criminal which seem unforgivable and for which nothing can compensate. At the same time, homicide is a violence that should never be acceptable and therefore cannot be justified, and human error will always allow for the possibility of wrongful convictions. The authors argue that the death penalty should be abolished in principle, but we cannot deny the existence of a criminal for whom the death penalty would be

appropriate. Ethically, it would be questionable to accept life imprisonment without parole as an alternative. We are of the position that there is no definite conclusion concerning the ethicality of the death penalty.

Keywords: Death penalty, Japan, Human rights

1. Current Japanese Position

Should the execution of murderers be permitted? This question is an old one in some countries and opinions clearly state 'no' based on the respect for human rights (1). A majority of countries have banned the death penalty, and on average three additional countries follow them each year. Other countries are taking an abolitionist position and postponing executions (2).

This, however, is not the case in Japan. Nationwide public opinion polls in 2009 carried out by the Japanese government showed that 85.6% of the population supported the death penalty because 'it is unavoidable'. That is the highest proportion ever recorded. Such polls have been conducted every five years since 1994 and have shown a continuous increase in the number of death penalty proponents each time. Opponents agreeing with the statement, *'Whatever the circumstances, the death penalty should be abolished'* made up 5.7% of the total, which was 0.3% lower than in the previous survey. The proportion of 'Don't know' was 8.6%, which showed a 3.9% reduction. The reasons given for supporting the death penalty included: the difficulty of settling the feelings of victims' families if the death penalty was abolished, heinous crimes should be compensated for with criminals' lives, and banning the death penalty might lead to the escalation of crime. In contrast, the major reasons provided by abolitionists included: criminals should be kept alive as a life-long punishment to atone for their acts, it would be impossible to repair a misjudgement, and it is unacceptable to kill anyone, even with the government's authority (3).

While the actual number of executions varies each year depending on the stance of the current Minister of Justice, it seems that court orders have toughened. In 2009, a total of 34 people were sentenced to death by a District Court, High Court, or the Supreme Court. This number was 27 in 2008, showing an increase of 7 people in 2009. While the number of death sentences was below 20 for a few years until 1999, it has increased dramatically since 2000 (4).

The human rights organization, Amnesty International, has voiced criticism over the increase of death penalty cases in Japan. They also criticize the execution of those whose mental capacity was questioned at trial in terms of responsibility for the crime, those who became mentally ill while in custody, and elderly people who could not even walk. Over a three-year period beginning in 2006, there were 32 executions—17 of those executed were over 60 years old. The death sentence of a 77-year-old man was unprecedented. Insufficient release of information on condemned criminals who had already been executed is another target of criticism. Furthermore, the conditions in which condemned criminals are held in custody are recognized as problematic. Some say that criminals held in such conditions are *'already erased from society'* (5).

Attention has also focused on the condemnation of how the death penalty is carried out. For such prisoners, each day could be their last since they are not informed of the execution (by hanging) date until the sudden visit from a prison officer with a death warrant signals execution within hours. Strictly enforced conditions, such as isolation and immobility (prisoners must be seated), add to the mental stress of prisoners (6).

As mentioned above, there are plenty of criticisms of the Japanese death penalty system. The citizen judge system was introduced to Japan in 2009 and requires citizens to participate in trials, including felon cases that could result in death sentences or long-term imprisonment. These circumstances have led to an unprecedented growth of interest in the death penalty. More and more books and presentations are being published about the citizen judge system, raising questions like, *'Is it actually possible for each elected individual to make the judgment of whether or not to sentence a criminal to death?'* (7-16).

In 1983, Japanese courts introduced the 'Nagayama criteria' to determine whether or not a criminal should be executed. The criteria include nine factors, all of which are used by courts in their decisions: the criminal's motive, method and cruelty of the act, number of victims, damage to and desire for retribution of the victim's family, impact on society, age of the criminal, his or her criminal record, and repentance shown after the case (10). Execution is carried out by hanging.

The international trend and the direction of the death penalty in Japan are obviously different. Under these circumstances, we will first briefly review recent Japanese commentators' viewpoints on the death penalty, highlight the major points of their arguments, and provide our opinions concerning the death penalty. In reality, while many countries are taking the abolitionist position, some countries remain retentionists. What arguments are made when considering the fundamental conflict in their opposing positions on harm and damage, and crime and punishment? What is the definitive factor? We will consider these arguments from several angles including law and ethics, ethics and culture, nations and human rights, rationality and emotion, retribution and revenge, and severe punishment and tolerance.

2. Issues Related To The Propriety Of The Death Penalty

The yeas and nays of the death penalty are diverse (17). The assertions of both abolitionist and retentionist countries toward the death penalty stand in direct opposition to each other. The first issue is the emotional status of the murder victims' families. Retentionists state, 'If the death penalty was banned, feelings of the victims' families would not be satisfied' (3). When arguing the appropriateness of the death penalty in our country, there is often the claim that feelings of retribution and the dignity of those on the 'slain side' should be the main focus (12). Some claim that the feelings of suffering of the murder victims' families should be the primary consideration (8).

The voices of the victims' families are often introduced via mass-media and gain the sympathy of those in the community. For instance, 37-year-old Mamoru Takuma

invaded a primary school attached to Osaka Kyoiku University with a deadly weapon in 2001. He killed eight students (one first grade student and seven second grade students), and injured 13 other students and two teachers. Takuma was immediately arrested at the school and was sentenced to death at Osaka District Court two years later. He stated that his motivation was 'I wanted to prove to the world the absurdity that even a child of wealthy parents could be killed in five to ten minutes by a man who has no future prospects like myself' (17). The victims' families commented that 'We wish him to disappear from our world as soon as possible', 'I would rather kill him myself than breathe the same air as the murderer', and 'The death sentence preserved my sanity' (12). In another case in 2004, in which Kaoru Kobayashi kidnapped and murdered a 7-year-old girl, and then raped and damaged her dead body, the girl's parents stated that 'Our damage and sorrow will never ease even if we killed him many times', and 'He deserves more than the death penalty' (16).

Conversely, lawyers who are death penalty opponents commented, "*We must admit that the feelings of the victim's family are more intense than anything. Lawyers can cross-examine the facts, but it is impossible to cross-examine their feelings. We should always apply the law dispassionately. We must remain calm, otherwise the court would suddenly become the location of lynching*" (14).

These lawyers think that it is unacceptable to give top priority to the families' feelings, and that judgments should be based on rational thought rather than emotion. They also argue that the bereaved family's rage should be treated with great sympathy and deserve sufficient emotional care, and even if the murderer is sentenced to death, the family's feelings will not be eased.

We maintain that if feelings of revenge against the murderer are the strongest fundamental reason for maintaining the death penalty system, and is each and every judgment's basis for the death penalty, court decisions might be different when people without relatives become victims. Hence the integrity of the court system would become difficult to justify. Moreover, since the feelings of the victim's family may lead to different decisions for similar crimes, we must question the fairness and adequacy of the legal system.

The second issue to focus on is the fulfilment of justice, in other words, maintaining fairness. In 1999, an 18-year-old man murdered a 23-year-old woman and an 11-month-old baby girl. The bereaved man whose young wife had been raped and murdered and young daughter beaten to death stated, '*A man who took someone's life through his selfishness should not have any choice but giving his own life for atonement. That is justice and social justice. The judicial system should fulfil social justice and must contribute to a wholesome society*' (9). Let us point out one issue: the feelings of the victims' families described above are vengeance and should be differentiated from 'retribution'. When there is love and/or sympathy felt for a person who has suffered damage, it is generally considered vengeance rather than retribution. Retribution requires a response to others, including victims to whom no one would pay attention. Retribution is impartial, it gives the same weight to the damages of a

person who has no friends and a person who is popular (18). In fact, from the universal social view, society needs to be fair and impartial to every nation. Thus, the consideration of how judgments lead to appropriate punishment (penalty) for a convict who committed murder is actually a reflection of retribution (17).

Seiji Fujii, a Japanese non-fiction writer who supports the death penalty, stated 'It is impossible to understand why the life of a perpetrator needs to be protected even once s/he has murdered so many people, and/or murdered a victim in outrageous ways'. He claims that in order to carry out justice, the murderer may need to be executed under certain circumstances. He also comments that, 'From my point of view, it is ethically unacceptable that the nation would guarantee one's life even if s/he murdered a few people or committed mass murder' (12). Some dreadful actions exist in our society that must not be forgiven and are impossible to legitimize under any circumstance. Therefore, his allegation is that justice should support the position that the perpetrator of a brutal crime, such as murder, must be eliminated. He believes that the death penalty, in the context of atrocious cases, is a natural reckoning.

On the other hand, there is an argument that the target who deserves reckoning after a brutal crime is not just one individual, but that society has some responsibility for fostering the crime. Anyone, usually a 'vulnerable person', can become a victim or criminal just because they happen to be present at the crime scene. Some insist that factors including unfortunate coincidence, mental illness or retardation, poverty, inadequate education, family breakdown, and suffering from domestic violence during early childhood can be remote causes for many crimes (14, 16). It has been argued that it is nonsense to eliminate criminals on a tentative basis while society creates new crimes (19). Some executions may have been politically exploited and some criminals may not have received adequate judgment under a militaristic administration.

If the death penalty were given only to socially vulnerable people, we would clearly call it injustice. For instance, there was a case called "*Nagayama-jiken*" in 1968, in which a 19-year-old boy stole a gun from a U.S. military base and killed a security guard and a taxi driver. The boy's motivation was mercenary because he intentionally committed the crime to steal money from the taxi driver. Thus, the case was considered a murder-robbery. Nagayama (the boy) was born in an extremely poor rural area. His family had been on welfare benefits and sometimes their poverty was so extreme that he had to eat food from the roadside. Nagayama started to work hard after being arrested, reading Eastern and Western philosophical and ideological literature, as if he was making up for 'lost time'. His inner personality changed dramatically to the extent that he began publishing works of fictions and poems. At the trial, he protested that the death penalty judgment was unfair for him because 'poverty and ignorance led to his crime' (8). In the 'Fujimoto case', despite the fact that it was difficult for the defendant to go through a proper judicial process due to Hansen's disease, he was executed soon after claiming false accusation. In the 'Komatsugawa case', a young man committed a felony due to social discrimination. The

underlying factor in this case may have been that although he had extraordinary academic skills, he could not find employment because he was a North Korean resident in Japan and grew up in poverty (8). In our opinion, it should be acceptable to regard these cases as the result of a discriminative process, or acknowledge that discrimination was involved in the background of each case.

When considering true justice, terminating the chain of violence is another point of view (17). A non-fiction writer, Mori, who is an opponent of the death penalty, describes the significance of stopping the chain of violence. Mori argues that, *"There are some people who believe that it is natural to execute murderers because they took precious lives. That is not right. Crimes occurred in the past. You cannot turn the clock back. Equally, life is not recoverable. However, the death penalty will be carried out in the future. Then we can stop it."* (12).

Concordant opinions include forgiveness to end a chain of hatefulness, or that perpetrators should atone for their crimes throughout life rather than giving their own.

The third issue relates to an alternative to the death penalty. In Japan, this amounts to life in prison without parole. There are some concerns about the current Japanese position on felony charges that can lead to the death penalty, for which the alternative is serving a life term in prison with the possibility of parole. The recent widespread idea in Japan, that criminals who avoid the death penalty and are sentenced to a life term in prison with possible parole will be released one after another on parole within 10 years, is wrong. For example, only one criminal among those serving life sentences was paroled in 2007 after spending over 30 years in prison. Currently, more than 1,600 prisoners are serving life sentences with possible parole and most will end their lives in prison. Some prisoners have spent over half a century in jail (11, 15). Therefore, advocates make the point that life imprisonment without parole is unnecessary.

When comparing the death penalty and life imprisonment without parole, abolitionist and retentionist perspectives are in direct opposition. Retentionists discount life imprisonment without parole because it takes away a convict's motivation for life, making rehabilitation and welfare difficult. Also, one report mentions that the maintenance budget for life imprisonment without parole is higher than the death penalty. The decision to "not kill criminals" means that society and the criminal should coexist. Therefore, without parole, imprisonment is contradictory to that original purpose. There are some problems with life imprisonment, such as the aging of convicts and the need for nursing care, no potential for getting time back, and spending a lifetime in prison being perceived as 'never given another chance', among others (11). Thus, life imprisonment without parole has been suggested to be crueller than the death penalty. Some state that over 20 years of imprisonment can lead to the development of psychiatric disorders. Hence, in some cases, "a death sentence is gentler than a life sentence without parole" or a life sentence "kills convicts by inches". Sakata, a former prison guard, stated that we bury convicts in a tomb called prison, and it is the same as eliminating them from our world, which is contrary to humanity (15). "We have

no hope for the future, which is equal to nothing. We prefer to be killed immediately rather than gradually burning to death," voiced convicts who are serving life sentences without parole in Italy and France. Thus, some opinions consider imprisonment without parole as far more inhumane than the death penalty (10, 17). The former Minister of Justice in Japan commented that, *"Life imprisonment without parole denotes that those convicts have no escape from prison for life—it is equivalent to executing them gradually. This shows the possibility of destroying convicts' personalities through hopelessness. We must admit that, in some ways, life imprisonment without parole is crueller than the death penalty"* (10).

We cannot deny the fact that convicts experience measureless terror every day because they are not informed about their execution day until the very morning it will take place (it usually takes about eight years until execution). We must consider their stress from detention, development of psychiatric diseases, and fears leading up to actual execution. Early execution would alleviate the psychological burden, but it will not guarantee a sufficient opportunity to re-examine the judgment. This could lead to an imperfect system that brings about false accusations.

On the other hand, if we were to ban the death penalty under current Japanese circumstances, the possibility of life imprisonment with parole will be the highest penalty. This will certainly be too light a sentence compared to the death penalty, so some insist introduction of life imprisonment without parole. Inmates will not be executed, but must spend their entire life in prison so that they can recognize what they have done to others. Convicts should work and earn money every day, and send their wages to the victims' families while spending the rest of their lives in prison to acknowledge their mistakes and reform themselves (17). Some opponents of the death penalty argue that once we kill the murderers, they have no chance to acknowledge their mistakes and reform, no chance for their souls to be saved, and no chances for re-education.

Under current Japanese law, punishment is not for retribution, but for education, and convicts are required to undergo correctional education. At the same time, it is the hope of our society that each criminal will come to regret what s/he has done and become a good-hearted person before execution (15). It is said that criminals can change through inner reflection and introspection, sometimes with help from religious people, while facing their own death. In other words, the purpose of the death penalty is to let the convict die after rehabilitation and becoming a new person by facing his/her own death. This leads to the open question of, *'Why should someone be killed after they are re-born?'* If there is an afterlife, once the convict has repented for his/her sins, s/he will receive eternal life in heaven. Thus, killing someone after his/her repentance would have implications. If, on the other hand, there is no afterlife, the act of repentance loses its purpose.

The fourth issue is that misjudgement in a death penalty ruling is impossible to correct after the execution has been carried out, but there is a chance for re-examination if the convict is sentenced to life imprisonment without parole. In the United States, for

example, 133 false accusations resulting in death sentences were reported, and four cases of false accusations have been acquitted at retrial in Japan (the Menda, Saitagawa, Shimada, and Matsumoto cases) (10). There is always the possibility of convicting an innocent person. Convicts sentenced to death, even if they did not commit the crime, are executed. Humans make mistakes and thus wrongful convictions can result from the assumptions, prejudices, or discriminations of prosecutors and jury members. If the purpose of the death penalty is disempowerment and disablement, then life imprisonment without parole would be a sufficient alternative (19).

Fifth, the most fundamental reason for opponents of the death penalty among many countries, including those of the EU, is the respect and protection of human rights. Human rights are sacred, and inherent rights exist simply because we are human beings. The death penalty violates the right to life and is therefore wrong. If we believe that torture and inhumane punishment are absolutely prohibited, then the ultimate irrevocable punishment, i.e., execution, should also be prohibited. Ultimately, human rights proponents ask us to see the death penalty as an unnecessary interference with the right to life because no immediate threat to another life is posed by the condemned human being (1). Murder is an evil that violates the right to life. Execution of a death sentence is brutal murder by a nation, and therefore an outright violation of human rights. Thus, the death penalty must be abolished. To ultimately deny a condemned criminal's human rights and individuality is to carry out an execution (16). Killing is cruel if torture is involved, but killing someone in the absence of pain is just as cruel. Consequently, the gas chamber, electric chair, death by hanging, death by guillotine, and the recently developed lethal injection, which is regarded as 'the most humane way' to carry out a death sentence, are all considered heartless acts.

Mori states, "*Retentionists say 'pay for your crime with death', abolitionists say 'pay for the rest of your life' — both are wrong. Because life cannot be recovered even after a murderer is killed, s/he cannot expiate. Moreover, we should not use a word like expiate easily. After all, we must not kill anyone under any circumstance... Life is much more precious than the emotion of retribution... Even if s/he is a criminal, his/her life is still valuable*" (12).

In contrast, retentionists allege that if we do not execute murderers, the principle of respect for the right to life will become diluted. When you claim someone's right to life unjustly, you deserve to forfeit your own. Others believe that after committing a brutal murder, the person is no longer human, but rather a monster. Therefore, the person loses his/her human rights.

Finally, we will enumerate other perspectives that are just as important as the points mentioned above. While retentionists believe that the death penalty deters crime and prevents repeat offences, abolitionists argue that it has no power as a deterrent. In France, they alleged that 'We can keep our peace without the guillotine' (10). Others claim that the death penalty can lead to society becoming barbaric, increase group lynching, and may also result in the development of mental dysfunction among prison guards (19, 20). Ando's primary reason for

abolishing the death penalty is the existing discrimination towards prison guards. Historically, executioners have experienced severe discrimination from society. Perhaps this kind of discrimination comes from the human reaction triggered by the heinous act in which a man kills another human. He also mentions that the reason executioners tend to be abhorred and rejected from society is that a legal system that tries to maintain social order by killing criminals is itself abhorrent (19).

In addition to the positions above, some are deeply concerned that the death penalty system itself may induce crimes by those who have a desire to be killed by the death penalty. Some criminals actually voluntarily commit murders in order to be sentenced to death. Some convicts reject their own appeals and request early execution once they receive the death penalty. The above-mentioned cases of Takuma and Kobayashi are in this category. Suspicions then arise as to whether the death penalty is a suitable punishment (16).

3. The Course Of Action That Japan Should Take

It is our point of view that both abolitionists and retentionists have strong arguments to support their respective opinions, yet there remains no argument to overwhelmingly refute either stance. However, we believe that in principle, the death penalty system should be abolished for the following reasons: First, there have been some false charges and it is impossible to get the number down to zero. Second, it must be acknowledged that some brutal crimes have occurred because of background factors, for which society should take some responsibility. Third, to end a life is the ultimate vice and therefore a violation of basic human rights, even in the case of criminals. Fourth, it is important to suspend the chain of violence and the chain of murder, and the death penalty is brutal murder by a country. If we want our society to become one without murder or violence, the fewer the deaths the better. Fifth, it can be argued that enforcing the death penalty leads to a less civilized society. The possibility of someone imitating the act of murder, which the country carries out legally, is not nonexistent. Sixth, we doubt that it is appropriate to carry out the same action against someone who committed an unforgivable crime. In other words, if it is impossible to justify killing somebody, then murder by the death penalty is also unjustifiable. Or is there a legitimate basis for revenge? From an emotional perspective, we can argue that 'once you have destroyed, you must pay back', and this would be a normal reaction, but the actions required to forgive an unforgivable act will never be the same for everyone. Therefore, we must think rationally and consider that no matter how it happened or who did it, the unforgivable act will never be forgiven. Finally, in any crime, there will be contributing factors that we cannot fully comprehend. When committing a murder, the truth of how strong the murderous intention was and how much basic judgmental ability the murderer had at the crime scene will remain a mystery. We cannot deny the chances that those who desire the death penalty may commit a crime.

In contrast, we cannot assert that the death penalty should be abolished without exception. It is impossible to abolish it, no matter how strongly we may wish it, for the

following reasons. First, it cannot be denied that some crimes are so brutal that justice demands the murderer be eliminated. In Takuma's case outlined earlier, he murdered 8 young innocent children by stabbing them to death with a knife and injured 15 others with the same weapon. In Kobayashi's case, he kidnapped a 7-year-old girl, murdered her, fornicated and inflicted horrendous damage to her dead body. Some of these murderers deserve to be sentenced to death, and we will not contradict that. Second, we cannot ignore the feelings of revenge and retribution experienced by the families of murder victims. Their pain and anger must be far more intense than what we can imagine. Third, although the same human rights are equally applicable to every one of us, for those people who have taken that right to life from another for their own egocentric reasons, it can be argued they should forfeit their own human rights. In order to claim one's right to life, each of us must fulfil minimum obligations, such as not denying others the right to life. In cases such as those mentioned above, whatever the murderers' desires and motives were, those who became innocent victims of their violence had no reason to be killed or role in creating the murderers' resentment. It is absolutely absurd for the victims and their family (16). It is difficult for ordinary people to understand the mind of a murderer, who lives in society under the same basic rules, which includes 'not depriving others of their lives' (9). Fourth, we must apprehend the rate of recidivism of lust murderers. Fifth, it is unclear whether life imprisonment without parole is more inhumane than the death penalty, and vice versa. This may depend on each criminal's values and philosophy.

If it were possible to raise victims from the dead by taking a murderer's life, and it were the only chance to save the victim's life, would there still be opposition to it? Would those opposing the death penalty say, 'Yes, you can kill the murderer' or would the answer still be 'No?' The following hypothetical is posed in order to consider whether it is ever appropriate or forgivable to take a life.

A young man (A) needed some money for his own pleasure, so he shot a stranger (B) in the heart and took his money. There were many witnesses and the young man was arrested at once. After a highly transparent investigation, a fair process of deliberation with many eyewitnesses, and his spontaneous confession, there were no doubts that A was guilty of the crime. A grew up in a wealthy family and was provided with sufficient education. Currently, B is in a moribund state and although the medical team used every possible treatment, they do not foresee his recovery. The only chance for his survival is to receive a heart transplant. Without receiving this transplant within 24 hours, the prognosis of death is 100% certain. His histocompatibility is very rare and the sole compatible heart in the world is A's. B has a young wife with two babies. Can we take A's heart in order to save B?

The authors basically oppose the death penalty, but we believe that it would be forgivable to take A's heart for the purpose of saving B's life, even if A would consequently lose his life. B's life has more value than A's, and the former's right to life should be respected more. We cannot find any reason to respect A's human rights under these circumstances and leave B to die. It can be

assumed that B's family would prefer to save B's life, rather than waiting for A's repentance so that A can atone for the rest of his life.

If there is no way to save B's life, then we cannot easily claim A's. B's death is irrecoverable and killing A will not change this. Taking A's life makes no difference unless it can bring B back to life. The reason it always seems difficult to have arguments about the death penalty is that when irrecoverable accidents happen, we should be fair and make a balanced decision. However, neither 'an apology by killing oneself' (killing the murderer to atone for his/her crime) nor 'atoning by life-long apology' can bring back lives. The continuous agony suffered by the victims' families may never heal. Their greatest wish is for the victim to be alive. The families would do anything to make this possible, however, no matter how deep that wish is, it is impossible. That is the reality of murder cases (11). Mr. Harada, whose younger brother was murdered, poured out his feelings:

The sensation was like being suddenly thrown off a cliff. At the same time, many people including the mass media were on the cliff asking me if I wanted the murderer to be thrown off as well. Our family did not ask for that, but needed to be pulled up from the bottom. Therefore, we did not ask to toughen the law (11).

People get confused and worried when it comes to 'the death penalty'. It is not easy to give a clear solution to it (13). The Japanese death penalty system has many problems, including the possibility of false accusations, steps leading up to execution, and the confined environment in which prisoners are kept. Thus, Japan should set a moratorium timeframe regarding executions, and should halt them while we re-consider future policy. We have brought up alternative proposals, such as life imprisonment without parole. The death penalty is a severe violation of human rights, and problems can be pointed out from both humanitarian and technical perspectives. It is difficult to be fair and make balanced decisions after an irrecoverable crime like murder has occurred. The current Japanese death penalty system needs reconsideration, however, and society needs to reconsider how it should act towards murderers who deserve a heavy punishment such as the death penalty. We have not found a definite conclusion to this issue yet.

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The Influence of Tradition and Historicity in Husserl's Intersubjective Act of Constituting Meaning and its Effect in Making Ethical Decisions regarding the Beginning of Human Life

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During the Ancient and medieval periods, the trend of thinking is focused on the philosophy of being. The focus shifted on the philosophy of consciousness during the Modern Period. Rene Descartes started it through the ego cogito but went short due to solipsism and being reliant on metaphysics in the end.²⁴ Descartes started the task of introducing a new philosophy but went short in

²⁴“Descartes had the serious will to free himself radically from prejudices. But we know from recent inquiries, . . . , how much scholasticism lies hidden, as unclarified prejudice, in Descartes' Meditations.” Edmund Husserl, *Cartesian Meditations*, trans. Dorion Cairns, (The Hague: Martinus Nijhoff Publishers, 1982), 23-24.

achieving his aim. Edmund Husserl (re)introduced phenomenology as a new philosophy. In his first attempt, he adopted the Cartesian Methods of Descartes but went farther from the transcendental ego to empathy thus his phenomenology avoided the issue of solipsism. In the early Husserl, there is the supremacy of the transcendental ego experiencing the world through its consciousness and in the process constitutes meaning. In his second attempt, he conceptualized the notion of the transcendental intersubjectivity wherein it is not just an ego constituting meaning in the lifeworld but a community of egos communicating with one another through the use of language in constituting meaning in the lifeworld. In this act of constitution, Husserl acknowledged the significance of several factors like time, horizon, generativity, tradition, historicity and normality.

Basic Husserlian concepts including transcendental ego, intentionality, other egos, and intersubjectivity will be the subject of discussion of this paper. Moreover, epoche and transcendental reduction as basic acts needed to fulfill phenomenological method of going back to things themselves will also be discussed. However, to put limitations in this paper, the focus of discussion will be on tradition and historicity and their effects on Intersubjective constituting of morality regarding beginning of human life issue.

Epoche and Transcendental Reduction

The focus of phenomenology is on constituting meaning through describing the experiences of consciousness from a first person perspective. It is very different from the natural sciences and other fields of knowledge in which main constituting method is from a third person perspective. They look at the world and find meaning in it in a purely objective sense and look at concept of time on a momentary basis. In other words, they look at the world in an attitude of “as a matter of fact.” The pre-giveness of the world is taken for granted so natural sciences and the like employ presuppositions in their knowledge of the world. The way they observe the world is guided by these presuppositions. It is likely that even before they start observing the world, there are already hypotheses on the possible results. In a way, the meaning being produced is influenced by such assumptions. The “meaning” they discovered is valid for the meantime or until it is working in actuality.²⁵ When new scientific law or hypothesis is conceptualized, it will be the new basis of scientific reality. When time comes that it is not anymore applicable, its truth value will vanish and another scientific law or hypothesis will take over. This happens because science is founded on purely objective sense of knowledge. All kinds of knowledge in the realm of natural sciences can technically be doubted because they are grounded on assumptions. In experiencing the world, a scientist always bears in mind these assumptions. Scientists do look at the world in bias with given scientific assumptions based on scientific laws specially the law of cause and effect. They always think that for their observations of the world to be valid, such

²⁵“Though de facto, as science itself must ultimately see, it does not attain actualization of a system of absolute truths, but rather is obliged to modify its “truth” again and again . . .” Ibid., 12.

experiences must be in accordance with scientific law. If not, then these experiences are false or at least not in accordance with scientific facts. These sciences must be grounded in the life-world for them to have indubitable sense. In other words, scientific assumptions must not be the basis for acquiring facts but rather the consciousness' pure experience of the world.

With this reality, Edmund Husserl saw the need to search for a science or a philosophy that is apodictic. A field of knowledge that is indubitable. "*We remember now the Cartesian principle for building genuine science: the principle of absolute indubitability, by which every imaginable doubt (even though it was in fact groundless) was to be excluded.*"²⁶ But to begin this new philosophy, there is a need to perform two things. First is an epoche which Husserl defined as a bracketing of one's natural attitude of seeing the world. There is a need to set aside, but not totally wipe out, our biased knowledge and presuppositions of the world. We need some sort of intellectual cleansing that is to take a second look of the world, not as an observer, but based on how we experience the world. For Husserl, our experiences "*(It) should be guided by what is actually given, rather than by what we expect to find given our theoretical commitments.*"²⁷ Our experiences must be guarded against being influenced by what we already know. Instead, experiences must be in the category of pure experience, that is how the world presents itself to us. Secondly, there is also a necessity that we do transcendental reduction. We must go back to our consciousness, to the transcendental ego, to how we experience the world in the subjective sense or from the first person perspective.²⁸ We need to go back to the things themselves not merely looking at the world in an objective sense, but rather as subjects experiencing the phenomena in the world wherein we are also a part of. It is more accurate to describe the world through the experiences of the ego, the subjective sense, rather than by mere observation of it from an outsider's point of view, objective sense. The experience of consciousness is the basis of every knowledge. Even scientific laws are based on how these scientists saw and experienced the world. From ones consciousness, one derives meaning. We know the world, we find meaning in it and we form bodies of knowledge through our experiences of the world as a part of it.

The Transcendental Ego

Husserl, in his first attempt to develop phenomenology, adopted the Cartesian way of Descartes as his starting point and went beyond it. In it, the transcendental ego is conscious of itself. Consciousness of oneself is indubitable. By denying it, you are technically proving it. At this point, he adopted Descartes' idea of the ego

cogito but for Husserl, a consciousness or the transcendental ego is always conscious of something other than itself. It is an ego that is open to the world, experiences the world and constituting meaning through the ego's description of his experiences of the world. This is the very notion of intentionality. "*Conscious processes are also called intentional but the word intentionality signifies nothing else than this universal fundamental property of consciousness: to be conscious of something; as a cogito, to bear within itself its cogitatum.*"²⁹ The transcendental ego that is aware of itself is also conscious of the things in the world. The transcendental ego's natural act is to seek things that are apart from itself but are parts of this world. It has a natural tendency to know things, to experience them and to find meaning through and in them. "*The world is for me absolutely nothing else but the world existing for and accepted by me in such a conscious cogito.*"³⁰ It goes outside of itself. Just like the transcendental ego, the ego's experience of the world is also indubitable because it is a firsthand experience. It is the experience of the transcendental ego. No one can deny that the ego experienced the world in such manner. No one can also challenge the validity of an ego's experience because it is its experience, a firsthand experience whose validity is only known to him but can be shared to others through communication. The experience is valid and indubitable as long as it appears to consciousness of the transcendental ego.

In the beginning, the ego looks at things in the sense that all are parts of the world as if it is the only consciousness observing the world. What if at a certain point another man stops and stares at that ego observing the world, then that transcendental ego realizes that the other man is not just a body or an object but another consciousness, an embodied consciousness that is also staring and observing the said ego. By means of analogy or empathy, one can say that in some way he knows that the other man is a consciousness because he has a body. This body is not just a thing that can be a subject of an ego's experiences but also an embodied consciousness that can experience other consciousnesses and things in this world. We know the presence of the other egos through the experience of being subjected as an object to their sight. Then we realize that, aside from our ego, other consciousnesses exist. The transcendental ego is both a subject, that is conscious of the world, and an object, that is being experienced by other egos. Experience of others as other consciousnesses is not a presupposition because a direct stare can make one feel the stare and in the process one feels conscious. Empathy is not a product of an assumption or pre-conceived thought. The fact that there are other consciousnesses is a product of the ego's experience of other embodied consciousnesses.

Although other egos might be subjected to other egos' stares, their consciousnesses are inaccessible. The stare is limited to what is outside, the body and the action, or what is being spoken of. We cannot directly experience the consciousness of others. "*That I have an actual experience of the other, and do not have to do with a*

²⁶Ibid., 16.

²⁷Dan Zahavi, *Husserl's Phenomenology*, (Stanford, California: Stanford University Press, 2003), 44.

²⁸"Thus Husserl writes that the fundamental phenomenological method is called reduction because it leads the natural realm of being, with its derivative existential status, back to the primal transcendental real or basis." Dan Zahavi, *Husserl and Transcendental Intersubjectivity*, (Athens: Ohio University Press, 2001), 10.

²⁹Husserl, *Cartesian Meditations*, 33.

³⁰Ibid., 21.

*mere inference, does not mean that I can experience the other in the same way as the other experiences himself or herself, nor that the consciousness of the Other is accessible to me in the same way as my own is.*³¹ An ego's experience is impenetrable by one's stare or observation. This is the reason why the ego remains unique. Even though belonging in a community of egos, each ego has experiences that are exclusively his. Even if all egos experience the same thing, it is a fact that they have different experiences of that thing. Such individual experience can only be accessible through sharing by the use of language. Again, no one can doubt such experience because it is a firsthand experience. However, in terms of normality, it is often the case that an ego needs other egos in validating his experiences. This will be thoroughly discussed in the succeeding parts of this paper or in the second attempt of Husserl in developing phenomenology as a new philosophy.

Constitution, the act of meaning formation

Through the experiences on things, the transcendental ego performs constitution. Constitution is the generation of meaning through the interaction between consciousness as the subject or as an active agent and the world as passive agent or as the object. The consciousness interprets this phenomenon, his experience of things, and finds meaning in it. Moreover, constitution is the synthesis of the actuality and possibilities (potentiality), which the consciousness becomes aware of based on his own experiences and that of others, to generate the meaning of things in the world. *"(In other words,) nothing shall interest us but precisely that subjective alteration of manner of givenness, of manners of appearing and of modes of validity in them, which in its constant process, synthetically connected as it incessantly flows on, brings about the coherent consciousness of the straightforward "being" of the world.*³²

The constitution of meaning is influenced by the noetic which is the attitude of the transcendental ego or consciousness in experiencing a thing. This world is often experienced by consciousness in different types of attitude. Man may love or hate things in this world. Same thing can produce different experiences for each ego due to the noetic, the particular attitude of an ego towards a thing, and thus also produces different noema, the meaning produced that is influence by the specific attitude of an ego towards that particular thing.³³ A table may have a different meaning based on how the

consciousness looks at it. All are valid because they are the experiences of individual transcendental ego. This process involves some retention of the past experiences of the ego on that particular thing plus also some sort of its future. An ego's experience is not on a momentary basis but is a movement from the past, the present and the future. An earlier experience of a thing has some influence on how an ego looks at that thing. The possible future of that thing has also an influence on how an ego looks and gives meaning to that thing. For example, we may give a certain general definition of a chair. However, a particular chair may have a different meaning based on one's past, present and possible future experiences of that chair. A chair may be seen by a particular ego as a lucky chair because he experienced luck in every instances in the past when he used that particular chair. Moreover, such ego may think that whoever uses that chair in the future will also become lucky as he was in the past. Thus the present constitution of that particular chair by that particular consciousness is that it is a lucky chair which was influenced by the ego's past experiences with that chair and the possible future experiences of whoever uses that particular chair.

In the process of giving meaning to a thing, an Eidos, referred to as the shape or form of a thing, is being considered. Form or shape here can mean the physical nature or the character of the subject. Throughout time, if a thing has been consistently showing itself with a specific form or shape, such form or shape becomes its identity. Such form or shape becomes the distinctiveness of that thing in comparison with other things. Such form says what a specific thing is. Anything that has the same eidos belongs to that exclusive group of thing or subject. Through an ego's experiences and constitutions in the past, some sort of universal meaning is being retained by the consciousness for the present and being used again to give meaning to things with the same Eidos in the future. When a consciousness experiences a thing with the same form or shape with that which it has experienced in the past, it will automatically recognize the form of that thing and constitutes that it belongs to the group of that thing having that specific form as their primal identity. This will help a lot in constituting meaning of future experiences and in validating one's experience. Let us note here that this is not some sort of presupposition. There is still the primacy of experience by consciousness. Based on that experience, the consciousness will know what the eidos of that thing is. Such eidos is also present in different group of egos. Throughout life one develops certain characteristics or a personal character that concretely defines one's ego which is called habitualities. These are the new abiding properties of the ego that it has acquired through repetitions of certain habits throughout time. *"For indeed whatever occurs in my ego, and eidetically in an ego as such – in the way of intentional processes, constituted unities, Ego habitualities – has its temporality and, in this respect, participates in the system of forms that belongs to the all-inclusive temporality with which every imaginable ego, every possibility-variant of my ego, constitutes himself for himself.*³⁴ An identity is a product

³¹Zahavi, *Husserl's Phenomenology*, 113.

³² Edmund Husserl, *The Crisis of European Sciences and Transcendental Phenomenology*, trans. David Carr, (Evanston: Northwestern University Press, 1970), 146.

³³ "Accordingly, on the one hand, description of the intentional object as such, with regard to the determinations attributed to it in the modes of consciousness concerned, attributed furthermore with corresponding modalities, which stand out when attention is directed to them... This line of description is called noematic. Its counterpart is noetic description, which concerns the modes of the cogito itself, the modes of consciousness (for example: perception, recollection, retention), with the modal differences inherent in them (for example: differences in clarity and distinctness). Husserl, *Cartesian Meditations*, 36.

³⁴ Husserl, *Cartesian Meditation*, 74-75.

of repeated actions or habits through time. Such eidos are being retained and are continually being used in future constitutions as long as the same form remains the same in the time of such constitution.

Lifeworld, Horizon and Time

The world always exists in time and space. It is existing for man. All things around man form this world. There are many things but there is only one world, a world that is pre-given to man. "*The world is the universe of things, which are distributed within the world-form of space-time and are "positional" in two senses (according to spatial position and temporal position) – The spatiotemporal ont.*"³⁵ Man's life in this world is always in reference to time and space. Man experiences the world in a particular space, is conscious of things in the world at a particular given time and space and gives meaning based on his experiences of the world in the past, the present and the possible experience in the future. From this life-world, man derives knowledge and the ideals. Man's life therefore is inseparable with this pre-given world. The world and its meaning are always in relation to man. The existence of the world and its importance is always in relation to man.

When the transcendental ego experiences the world, it is an experience not just of things themselves but also of horizon. External horizon is the physical background wherein a consciousness can experience if it shifts focus. Although we do not focus on the background, it is there in the world together with the thing wherein we focus our consciousness. A thing cannot be floating in void, so as an ego. A part of this world serves as the physical background wherein we experience a thing or another ego. Second are the different angles of the thing one is conscious of. An ego that is looking at itself is incapable of seeing the total external horizon of oneself. Even in front of a mirror, a particular angle is the only visible to the one experiencing it. An ego is incapable of seeing the different angles of an object at the same time. The experiences of an ego are limited in a momentary basis. A consciousness can only focus on a specific angle of a thing in a given time but such experience of a thing by a consciousness is more than the angle that has been experienced. When an ego looks at things, it only sees an angle of it. That ego does not see the entire thing so there is a movement of the ego in the horizon to see the different angles and possibilities of the whole object. It is also a possibility that one becomes aware of other angles of a thing through the experiences of others. Unification of different aspects from different points of view constitutes the entire thing that is experienced by consciousness in the lifeworld. "*In the continuous alteration of seeing, the side just seen ceases being actually still seen, but is retained and taken together with those retained from before; and thus I get to know the thing.*"³⁶ The thing itself is more than what consciousness is seeing because it always considers the different angles of things from other perspectives.

Internal horizon is the time or the temporality in which we become conscious of things. Consciousness

experiences a thing not the way sciences do, that is momentary or static, but in a horizon of time or generative. "*Perception is related only to the present. But this present is always meant as having an endless past behind it and an open future before it.*"³⁷ When an ego looks at an object, it retains a little of its past (retention), the present and a little of the future (protention). The present object has been there because it has a past that contributes to its present and also has a future wherein it is looking forward to. Just like what has been discussed about the relationship between noema and noetic. Different experiences of the same thing by different consciousnesses can produce different meanings based on how they experienced that same object in the past, how they are experiencing it now and how they will perceive their possible experiences of that thing in the future. As a consciousness shifts its focus on angle to another angle of a thing it perceives, time changes so in constituting things, time and horizon are being combined to give meaning to a thing.

Influence of Tradition, Historicity and Normality to Intersubjectivity

Constitution is the task of the transcendental intersubjectivity. Through transcendental intersubjectivity, egos arrived at the constitution of the objective common world. Before it is just the task of the transcendental ego, now it is the task of the community of egos to constitute the world. This is the second and final attempt of Husserl in developing phenomenology as a new philosophy that is apodictic. Intersubjectivity is the communalization of an ego's experience. It is also a search for the validity of an ego's experience of the lifeworld. "*Thus in general the world exists not only for isolated men but for the community of men; and this is due to the fact that even what is straightforwardly perceptual is communalized.*"³⁸ Through this, the important role of language has been acknowledged. Man came to know people of the past through written language. With the same, the future generation will be able to know history. Both in one's sense of self and of the world, man can attain objectivity through others' validity. "*All this takes place in such a way that in the consciousness of each individual, and in the overarching community consciousness has grown up through {social} contract, one and the same world achieves and continuously maintains constant validity as the world which is in part already experienced and in part the open horizon of possible experiences for all; it is the world as the universal horizon, common to all men, of actually existing things.*"³⁹ Self, others, the common world and intersubjectivity are intertwined in searching for meaning and in giving meaning to things and to experiences of consciousnesses.

Intersubjectivity is the interaction of the different egos in constituting meaning in the lifeworld. It is the community of egos. This does not necessarily mean that the transcendental ego is being swallowed by a communal consciousness. But rather, the transcendental ego is just connecting with the other ego, and another and another, until such time that there is a community of egos communicating to one another in constituting the

³⁵ Husserl, *The Crisis*, 142.

³⁶ *Ibid.*, 158.

³⁷ *Ibid.*, 160.

³⁸ *Ibid.*, 163.

³⁹ *Ibid.*, 164.

meaning of the world. This is done in such a way that the transcendental ego's unique identity is preserved. It can always go against the consensus of the majority if it knows that the community is being blinded in their act of constitution or if it is the one who is being blind. Whether correct or not, a consciousness is unique, it has different experiences from others and can never be swallowed by another consciousness. *"(On the other hand, it is also important to insist on the fact that each single subject must possess a certain amount of ontological autonomy—since a complete elimination of this would make the very concept of intersubjectivity impossible.)"*⁴⁰

Lifeworld is not just nature but also people and the works of people like culture and history. *"Moreover, the very constitution of objectivity and of a common objective world is seen as a historical process."*⁴¹ Lifeworld is never empty. Lifeworld is the product of intersubjectivity. But this intersubjectivity starts with the transcendental ego. Intersubjectivity are subjects that are interconnected. So the subject is preserved. Intersubjectivity is just interconnections of egos and the experiences of their consciousnesses. *"(But) the synthesis of intersubjectivity, of course, covers everything else as well: the intersubjectively identical life-world -for-all serves as an intentional index for the multiplicities of appearance, combined in Intersubjective synthesis, through which all ego-subjects (and not merely each through the multiplicities which are peculiar to him individually) are oriented toward a common world and the things in it, the field of all, the activities united in the general "we", etc."*⁴² Everything around a consciousness, that consciousness, other consciousness and all activities that involve them; all are parts of the lifeworld. It is lifeworld that is always in reference to man and the space and time of man's experiences. The world is nothing without the consciousness. The world has meaning in reference to the community of egos. Likewise, there is no consciousness without the world. If there is no object to be conscious of, consciousness has no meaning at all. Husserl's phenomenology bridges the gap between idealism and realism. The meaning or ideas being constituted through intersubjectivity are grounded on the concrete experiences of the ego in the lifeworld. This is also true even in the past experiences of the ego that affects the present day constitution. *"Our apprehension, experience, and constitution are shaped by those normal and typical structures, models, and pattern which have been established by earlier experiences."*⁴³ There is the supremacy of the transcendental ego experiencing and constituting with the other transcendental egos wherein they become a community of egos whose function is grounded in the lifeworld.

A transcendental ego is a part of a community that has culture and history developed through time. *"(But) I am a 'child of the times': I am a member of a we-community in the broadest sense—a community that has its tradition and that, for its part, is connected in a novel manner with the generative subjects, the closest and the most distant*

*ancestors."*⁴⁴ The past is always important in constitution because through repetitions of habits of things in the past, an identity or an eidos emerges. Through that identity, a community of egos can validate the normality of an ego's experience. Thus, *"I learn what is normal from others (and, first and foremost, from my closest relatives, that is, from the people who raised and educated me), and, thereby, I am involved in a common tradition which stretches back through a chain of generations into a dim past."*⁴⁵ There might be disagreements within the community but it is acceptable as long as it is being discussed by people who share the same identity in terms of tradition, in other words those who belong to the same communal eidos and share the same language. Actually, disagreements are encouraged as some sort of test to validate an ego's constitution. This also shows that each consciousness is an essential part of that intersubjectivity of egos that constitute the meaning of the lifeworld throughout history. Moreover, a greater transcendental intersubjectivity is also possible among different group of egos with different bases for normality. Through this, the importance of language and of greater communication has been introduced. This will result to wider act of constituting meaning in a greater scope of the lifeworld.

History and tradition are two important components in the Intersubjective constitution. Throughout time, communal monads and eidos are developed through the habitualities of egos belonging to that particular community. These influence future Intersubjective constitution. *"...(T)he meaning-formations 'objectivity' and 'reality' have the status of Intersubjective presumptions, which can only be realized in an infinite process of socialization and horizon-fusion."*⁴⁶ This reality is always being seen as a part of preservation of a communal eidos. Moreover, history and tradition act as noetic in forming noema concerning issues that needs to be resolved by the community. *"The very category 'historical reality' implies a type of transcendence that can only be constituted insofar as I take over traditional meaning, which has its origin outside of me in a historical past."*⁴⁷ This only proves that egos in forming meaning always consider the past, the monads that were developed throughout time and the communal character of egos in constituting meaning.

Formation of Intersubjective moral principle on the issue about the beginning of human life

How one develops moral faculty? How one decides on moral issues? If we will follow Husserl's ideas, our morality is somewhat tainted by our assumptions and presuppositions about the world and human actions. We are part of a community that has assumptions and presuppositions about what is good and bad so there is a necessity for an epoche and transcendental reduction. An ego must be free from assumptions and presuppositions. Husserl, as discussed earlier, did not disregard these assumptions and presuppositions. What he is trying to say is that our knowledge must not conform to these presuppositions even before such

⁴⁰ Zahavi, *Husserl's Phenomenology*, 124.

⁴¹ Husserl, *The Crisis*, 138.

⁴² *Ibid.*, 172.

⁴³ Zahavi, *Husserl's Phenomenology*, 133.

⁴⁴ *Ibid.*, 138.

⁴⁵ *Ibid.*, 134.

⁴⁶ Husserl, *The Crisis*, 139.

⁴⁷ *Ibid.*

experience happens. Let our experiences be the source of our knowledge from a first person perspective. The transcendental ego must rely on the pre-giveness of the world that is presenting itself to an ego's consciousness. On the one hand, one's morality is partly developed through a person's first-person experience of the world. Moreover, a person's morality is also developed through time, influenced by his experiences and by the very tradition and history of the society where he belongs. An ego experiences the world; he constitutes meaning; and in a way retains some eidos or form of things and actions around him. As discussed earlier in this paper, there is a necessity for such constitution to be validated by the community who is performing a transcendental intersubjectivity through the use of language. Such is very important to attain normality on one's constitution. This is also true regarding morality which is also a product of an ego's constitution of the world which is influenced by the tradition of a community through time which is the product of such community of egos' intersubjective act of constituting meaning in the world.

One question that keeps on bothering mankind and often the source of moral and legal contention and heated debate is the question about the beginning of human life. When does human life begin? There are assumptions and presuppositions that tried and are trying to answer this question based on scientific, religious and metaphysical approaches. Example; "*For Aquinas the composite of form and matter was made actual by existence*".⁴⁸ Aquinas is talking about the process of ensoulment wherein the spiritual soul is infused in the zygote which is the earliest form of the human body that is undergoing gestation process. The presence of life begins during this ensoulment process, that is the union of the spiritual soul and the material component which is the body. Science on the other would argue based on the ongoing function of the human body as the basis of the presence of life. If there is a bodily function, then there is life. For religion, specifically the Catholic Church, "*Respect and reverence for human life (then) is a core human and Christian virtue*".⁴⁹ Human life, as a gift from God, is ought to be respected and protected from the moment of conception until the natural death of the body. As we have discussed in the first part of this paper, such assumptions and presuppositions are somewhat dubitable because they are not a product of a first person perspective. Moreover, these assumptions have a great impact on how we look at the issue about the beginning of life. It seems that we pattern the would-be-result of our analyses on this issue based on these assumptions and presuppositions so to follow Husserl, there is need to set aside these assumptions and presuppositions and try to take a second look from a first person perspective or from the actual experiences of an ego. It must be noted that these assumptions and presuppositions must only be

set aside and not totally disregarded. They might be helpful in aiding to overcome the limitations of human consciousness that we use in experiencing the world. It must also be noted, however, that experience must be prior to these assumptions and presuppositions. An ego's experience to be valid and indubitable, it must not be pre-determined by any assumption or presupposition.

If one would rely on his senses in experiencing human actions, it seems that there would be a problem regarding the issue of the beginning of life. It is a fact that by just relying on an ego's experience, the presence of a new life in a mother's womb is only visible to the senses after the first month of gestation. If we will follow strictly what Husserl says about the validity of the source of one's constitution, then we may conclude that this is the beginning of human life. This is an indubitable experience of an ego that constituted the meaning about the issue on the beginning of human life. Husserl, in our discussion, acknowledged that the present capacity of an ego for acquiring knowledge through the experiences of the consciousness in constituting some things in the lifeworld is in the process of developing. We may not become aware of everything in the world because of such limitations so this may be the time wherein we seek the help of science in improving what our egos senses and consciousness can experience. But again, experiences must not be pre-determined by scientific assumptions and presuppositions. To follow Husserl's idea, the primacy of an ego's experience must be preserved. To improve the accuracy of an ego's experiences, it can rely on scientific apparatus or gadgets. For example, to know the very beginning of pregnancy, one can rely on some pregnancy test kit. Besides, when one becomes aware of a pregnancy, one takes as a fact that pregnancy started not on the moment of detection but on a prior date. In this case, such constitution was based on the experience of an ego that is aided by science to improve sensory accuracy. There is still the primacy of an ego's experience.

Now, regarding the beginning of life issue, the same explanation must be followed according to the Husserlian tradition. An ego must constitute the meaning of such issue based on one's experiences that might be aided by some bodies of knowledge without disregarding the primacy of an ego's experience. Again, there should be no pre-determination of experience based on assumptions and presuppositions. Moreover, such personal constitution must be validated by the intersubjective act of the community of egos in constituting the meaning of such issue. Husserl would also suggest that a greater transcendental intersubjectivity, that is community of egos co-constituting meaning with other communities of egos, might help in resolving this issue. There would be debate on this issue but a reminder from Husserl, as discussed in the first part of this paper, that an ego and even community of egos might have limitations in constituting meaning through experiences. Such limitations should be acknowledged until such time that such issue can be dealt with by the ego. As noted earlier, an ego is not perfect but is in the process of developing.

Conclusion

⁴⁸ Aristotle and Aquinas by Joseph Owens, "Aristotle and Aquinas" in *The Cambridge Companion to Aquinas*, ed. N. Kretzmann and E. Stump (Cambridge: Cambridge University Press, 1993), 48.

⁴⁹ Catholic Bishops' Conference of the Philippines. *Catechism for Filipino Catholics*. (Manila: ECCCE Word and Life Publications, 1997), 279.

Husserl's transcendental intersubjectivity is a great source of understanding the very nature of man's knowledge and the process of acquiring it through the process of constitution and the ego's experiences of and in the lifeworld together with other egos. It is a science that is common to every ego cogito, to every man whose consciousness is active. It is a philosophy that is grounded on man's life. It is a constituting act that is based on man's primary characteristic, the ego's consciousness. Husserl's phenomenology avoided the errors of some fields of knowledge that assumes too much, that claims too much and that thinks too much of things that are not grounded on what is tangible to human experiences. It is also very modest because it only claims what the consciousness actually experienced and nothing more than that. It acknowledges the limitations of man and only claims what can be claimed for the present moment and let time and future experiences decide whether to claim more or not. It is also very human because it acknowledges the importance of others in constituting meaning. It is not anymore I but we in transcendental intersubjectivity. Husserl's phenomenology is a philosophy that is very human in all aspects. Since it is very human, its claims are indubitable because they are grounded on something concrete, the experiences in the lifeworld of the ego's consciousness together with that of other consciousnesses.

This kind of philosophy may be a good tool in trying to solve the issue regarding the beginning of life. The meaning produced by an ego's experiences and validated by the transcendental intersubjectivity and by the greater transcendental intersubjectivity is concrete in a sense. Such meaning is indubitable and only claims what can be claimed, no more no less. As such, it also acknowledges human limitations in constitution; but nonetheless there is still the possibility of experiencing such in the future for the ego's capacity is still in the process of developing. For Husserl, let the ego's experiences constitute what it can constitute with help from other egos as co-constituting agent, nothing more and nothing less.

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Research Ethics and Asian Culture: A Western Individual Autonomy or an Asian Shared Decision Making?

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Abstract

Researchers and health care professionals, during their practice, always find themselves confronted with moral questions and confusing ethical issues. The ethical issues are usually complex, deep, and require a careful search for the right or appropriate answers. In the profession of health care and during clinical research, it is very important that a physician and a researcher should not only maintain the physician-patient or researcher and research subject relationship but should also respect the basic principles and rules that govern the research involving humans. However, an inherent tension does exist among these principles not only for their importance one over each other but also regarding their practicability in different cultures and this is very common when it comes to the principle of autonomy. Asian culture emphasizes interdependence and interconnections, individuals share their decisions with others whereas western societies emphasize independence and they believe in total individual autonomy. Therefore, the concept of autonomy may hold a different position in different cultures during the decision making process, for that reason it is require that both cultures should come close to each other at this point and learn from each other's experiences, so that a generalized, acceptable rule can be made during dealing with patients or research subjects.

Introduction

Biomedical ethics (bioethics) has become a popular topic in the field of medicine nowadays. It not only addresses issues related to the patients but also has an important role in the field of progressive research like the human genome project, cloning, patenting of human tissue products, and transplants. ⁽¹⁾ In Asian countries, research ethics is an emerging field looking for high standards of ethics to implement in research practices. However, there are multiple challenges associated with research ethics; many of them are due to the relationship of modern bioethics with the western philosophy. ⁽²⁾

Research involving humans is governed by many principles and rules such as principles of autonomy, beneficence, non-maleficence, justice, and the need for

informed consent. The four principles approach to biomedical ethics collectively known as the "principles oriented framework," or "principlism," was developed by Beauchamp and Childress in America in the 1970s, and has been promoted by Raanan Gillon as the "four principles plus scope" approach in Europe.⁽³⁾ It has been widely accepted, especially in medical circles, as a set of universal guidelines for bioethics, despite much intense criticism. However, as this theory is developed from American common morality, which mirrors certain aspects of American society, may for this reason alone be unacceptable in the context of other societies.⁽⁴⁾

Moreover, an inherent tension does exist among these principles not only for their importance over one another, but also for their feasibility in high context Asian culture, which emphasizes interdependence, interconnections with others, and a present time orientation. This contrasts the low context western societies which emphasize independence, the individual and future time orientation.⁽⁴⁾

Asian countries: Challenges in medical research

One of the great challenges in medical research is the position of individuals. In the Asian countries, the individuals are entangled in a web of intricate complex relationships. Fu-Chang Tsai⁽⁵⁾ states that "... *in Chinese thinking, individuals are never recognized as separate entities; they are always regarded as part of a network, each with a specific role in relation to others*".⁽⁶⁾ The physician assumes the role of a family member and makes decisions for the patient for their benefit. This may make the individuals vulnerable and deprive them of choosing their own conception of what is considered good. Further, in the society where individuals live in an extended patriarchal family structure, where families have strong religious and cultural beliefs and values, major decisions are taken collectively by members of the family and, therefore, the western paradigm of individual autonomy may not be practical.⁽⁶⁾

In the context of research and delivery of the health care system, the good and benefit are used for the restoration of the health of patient and a commitment toward human welfare.⁽⁷⁾ While accomplishing this fiduciary duty of beneficence, the physician and researcher sometimes intentionally override these important preferences and actions that will benefit the research participant in particular and society in general, such as in the case of Tuskegee experiment, in which low income African Americans were kept untreated for syphilis; and the researcher did not disclose the availability of the treatment.⁽⁷⁾

The ethical concerns become prominent when the involved parties have different interests or values. In this situation a potential conflict exists between the burden and risk imposed on patients and society. Ethical concerns may also arise when there is a large imbalance in power between doctor and patient, and this may result in the exploitation of the patient as well as research participant.⁽⁷⁾

Decision making in Asian culture

Medical ethics in the Asian countries has been imported from the West by the Western trained

physicians. Practicability of this paradigm in the Asian countries poses ethical difficulties for researchers and health care professionals. The centrality of the family in major human life events such as birth, illness and death is a universal phenomenon; however the level of family involvement may vary from one society to another. (8)

In most Asian societies, major decisions are taken collectively by members of the family. Regarding the disclosure of diagnosis and prognosis, patients and family both expect that the physician should inform the family first; especially in the case of an elderly patient with a serious disease. Families usually discuss with the physician how best to inform the patient and to guide the patient for a particular treatment plan. The concept of individual autonomy is bound with the advice of elders in the family such as father or husband in case of married women. Ren-Zong Qiu⁽⁹⁾ states that in the post-revolutionary era, China has developed a decision making mechanism that stresses consultation between physicians and family members involving the competent patient, sometimes including close friends or coworkers and the chief of the unit in which the patient works. (9) Therefore, a distinction exists between the roles of Asian (collective) autonomy vs. Western (individual) autonomy in the decision-making process. It has been presumed that the western individualistic notion of patient autonomy is inappropriate in Asian societies.

Informed consent from an Asian perspective

Informed consent is not only an authorization of medical/research intervention by patients, but it is an ethical right of every human being which signifies respect for the person.⁽¹⁰⁾ The concept of informed consent in most Asian countries, is only a formality and a routine clinical practice or only for the legal protection in case of an adverse outcome; without considering its moral values.

The actual perception of consent such as the acceptance of treatment or keenness to participate in research, choice for alternate treatment or refusal of the treatment is uncommon in the urban areas and rare in the rural areas of the country. Further, informed consent should be a continuous process of voluntary informed decision making in which individuals voluntarily agree to participate in research after the purpose, risks, benefits and alternatives have been thoroughly described and understood. However, in resource poor countries in general, it is only considered as a onetime process and there are many instances of informed consent forms being signed by the head of the family (father/husband) instead of the patient or potential research subject.⁽¹¹⁾

Similarly the clinicians who conduct clinical trials also form an opinion on the amount of information that they are required to provide to patients as part of the process for obtaining informed consent, being the better judges to assess patients' comprehension of that information as they are in close contact with them all the time. However this is nothing but ignorance as, it is possible that they may overestimate what their research participants understand.⁽¹²⁾

A recent study in several hospitals in Mexico City showed that physicians/researcher exercise power and authority over patients/research subject in an effort that

they perceive as beneficial or preventing harm. In most cases, due to vague and partial communication, the physicians/researchers do not seem to recognize or respect their patient's or research subject autonomy.⁽¹³⁾

Emanuel⁽¹⁴⁾ reported that there are seven requirements for the clinical trials to be labelled ethical; these are: 1. Progress of health or knowledge 2. Scientific validity of the research 3. Fairness of subject selection; depending on the scientific objectives 4. Well calculated risk-benefit ratio 5. Independent review of the research 6. Participants should be well informed about the research and provide their voluntary consent; and 7. Respect for subjects (For example, subjects should have their privacy protected, the opportunity to withdraw, and their well-being monitored).⁽¹⁴⁾ However, the practicality of these requirements, particularly relating to the voluntary consent, respect for enrolled subjects in terms of protection of subjects' privacy, opportunity to withdraw, and the wellbeing of research subjects, are less prevalent in Asian countries in general and in Pakistan in particular when compared to the countries like the USA and Canada.

Advantages of Western individual autonomy

Recent discourse in contemporary bioethics equates autonomy with personhood. This from the perspective of participation in research refers to the obligation of investigators to credit the desires of a competent individual regarding their wish to participate in scientific research.⁽¹⁵⁾

The concept of autonomy remains the intellectual and moral foundation of bioethics and is the direct manifestation of the western concept of individualism, which is a belief of importance, uniqueness, dignity, and sovereignty of each person and the sanctity of each individual life.⁽¹⁵⁾

According to the principle of individual autonomy, every person is entitled to individual rights such as autonomy of self-determination and privacy. This enforces the individual, which renders them resistant to exploitation by the researcher. The individual autonomy concept of western ethics makes a fairly clear distinction between facts and values. The research participant's values are well defined and known; what they lack are the facts. It is the researcher's obligation to provide all the available facts, and the research participant's values then determine whether to take part in the research or not; whether to be randomized or not.⁽¹⁵⁾

Disadvantages of Western individual autonomy

The western individual autonomy is a secular approach in bioethics. By implementing this approach they are isolating the ethical issues from their spiritual and social context to achieve an institutionally sanctioned method of resolving conflicts. Furthermore, the examination of the issues from a non-social perspective makes their approach not only limited but also incomplete and devoid of meaning and is also difficult to understand by the non-western observers.⁽¹⁵⁾

Advantages of Asian Shared Decision Making

The societal position of physicians and researchers is prime one in Asian culture in general. The

Physician/researcher not only holds a good role in a family but also makes decisions for the patient with family assistance. This act of physician and researcher places heavy responsibilities on them regarding the fulfillment of their ethical requirements of beneficence and safety of patients and research participants. This relationship may also prevent patient exploitation by observing a patient's social and cultural values and shared informed consent.⁽¹⁶⁾

Shared decision making with the involvement of family members in decision making is more pragmatic in the current economic and educational situation of the developing countries of the world. The shared decision making concept in the health care system and research is believed to be the best tool to exercise the autonomy of individuals and to render the researcher and the physician in a position to respect the patient and family values.⁽¹⁷⁾

Disadvantages of Asian Shared Decision Making

The paternalistic approach of the health care system is common in the Asian countries. In this approach the physician presents the patient with selected information that will encourage the patient to consent to the intervention the physician considers best. At the extreme, the physician authoritatively informs the patient when the intervention will be initiated. In the tension between the patient's autonomy and well-being, between choice and health, the paternalistic physician's main emphasis is toward the latter. However, Matthews⁽¹⁸⁾ reported that "It is the patient's life or health which is at stake, not the physician's...so it must be the patient, not the physician, who must be allowed to decide whether the game is worth the candle."⁽¹⁸⁾ Similarly, Edmund Pellegrino and David Thomasma⁽¹⁹⁾ argue that the "best interests of the patients are intimately linked with their preferences."⁽¹⁹⁾

Despite the importance of research participant and patient involvement in decision making and a choice to accept and refuse recommended medical treatment or to take part in the research, medical care practitioners and researchers are expected to do what is best for their patients. In certain situations, they are also expected to consider what is best for society, even if that may not be in the best interests of the patient. Moreover, in the cause of research, the paternalistic act of the researcher often uses different forms of unethical influences such as deception, lying, nondisclosure of information and coercion, so that easy recruitment may be possible.^(20,21)

Discussion

The debate concerning autonomy is a cultural one and in cultures change is a consequence of a creative interaction of ideas, values and activities. In this sense, the extension of family decision making across international boundaries is an exciting and enriching process and one that provides us with opportunities to explore our differences and challenges as well as our successes.⁽²²⁾

In highly individualistic cultures that assume rational choice as the main instrument in patient decision-making, autonomy may be expected as an essential part of the system, although it may have been overemphasized. The degree of normal autonomy may be different between

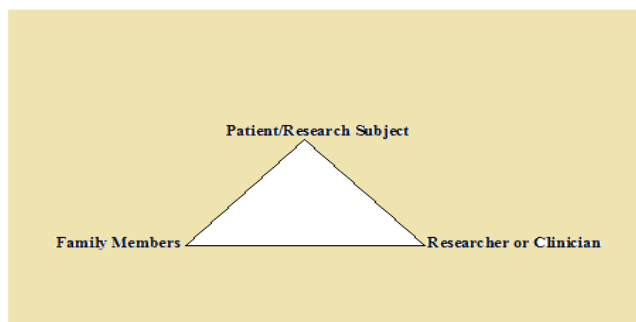
persons (patients/research participants), and between different times in the same persons (patients/research participants). Both of them, such as patients particularly confronting end of life care and research participants seeking treatment for their diseases, may not want aggressive autonomy but rather they may make choices congruent with them⁽²²⁾. Kleinman⁽²³⁾ reported that "studies of the social context of health care reveal three structural domains of health care in society: professional, popular (family, social network, community), and folk (nonprofessional healers). The great majority of health care takes place in the popular domain: 70% to 90%. When they do, decisions about where and when to seek care, how long to remain in care, and how to evaluate treatment also occur in the popular domain, most commonly in the context of the family."⁽²³⁾

Shared decision-making models with the involvement of family not only propose a careful search to determine the patient needs, family expectations, and desires, but also a negotiating process between physicians, patients and family afterwards. This model requires well defined competences from the researcher and research participant and also support to understand their situation and encourage informed choices. Therefore, there is a need to make an emphasis not only over the importance of autonomy of the research participant and patient during the decision making process but also the active involvement of family. The shared decision making process is not only a good tool for the protection of research participants and patients in Asian societies but also supportive to the patient and research participants of the western societies as well.

We conclude that Western and Asian societies should learn from each other

Safety and protection of the research subject are the prime responsibilities of the researcher in any research. However in paternalistic Asian societies, where individual autonomy is ranked second in comparison to the decision by the elders, research participant and patients are at high risk of exploitation by the researchers and clinicians. Therefore, a unique model will be required which will be a combination of Western concept of individual autonomy and the Asian perception of family involvement in the decision making process. This is so that the researcher, during the decision making process, will not only seek the permission from the research participant individually but also from the family of the research participant as well.

This model will be comprised of a triad of the patient/research subject, family members, and the researcher or clinician.



Through this model we may be able to avoid paternalism, to dilute power differences between the

researcher and the research subject and to ensure the research subject protection in a better way.

The West is required to adopt family involvement in the decision making process so that a strong connection of the individual with the family will be established whereas the Asian culture need to hold individual autonomy. The implementation of this understanding will decrease the chances of exploitation of common man in general and vulnerable group in particular. Furthermore, after understanding the researcher's descriptions, knowing all information, and involving the family in joint decision making, it will not only make it easy for the research participant to take part in research, but also for the researcher to enroll the subject and ensure their safety and protection.

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Conclusion: Contrary to the belief, our people from upper and middle socioeconomic classes are aware of their rights and duties as patients. However, the level of awareness and knowledge needs improvement.

Key Words: bioethics, medicine, patient rights, duty

Introduction

If the people of any civilization understand their rights as well as their duties, the clan in general grows well in all aspects of morals and subsequently economy. Healthcare workers' (HCWs) duties have been highlighted at many occasions and their rights have been discussed to only a limited length. However, as a physician and patient both work together to treat an illness the rights and duties are also balanced amongst the two. If either of them does not realize that, there is loss of harmony in their relationship and goals of wellness are not achieved (1). In developed countries with better literacy rates and awareness, patients are generally conscious of their rights and duties. In New Zealand, they have listed the Code of Consumers' Rights for all health and disability services (2).

Locally, in our city most of the families function as a unit and patients depend on their physician's paternalistic approach in making decisions (3). However, a gradual change is evident among the residents of Karachi, with increasing awareness of personal rights among the newer generation and increased accountability of health care professionals through media and developing legal systems.

Literature regarding HCWs duties and rights of patients explores is available but original research especially from our region is limited. It is an anecdotal belief of the medical community that patients in Karachi are not aware of their rights and responsibilities. This belief often affects the doctors' efforts in following ethical guidelines in clinical care. The assumption also creates potential conflicts between patients and their HCW. We conducted this survey to assess the awareness and knowledge regarding patient's rights and duties, of upper and middle socioeconomic classes, living in a cosmopolitan city of Karachi, Pakistan.

Methodology

This cross sectional survey was conducted in Karachi, which is a cosmopolitan city of Pakistan. The literacy rate in this part of the country is approximately 45% and majority of people have access to world media through television and internet. People from variety of cultural environments, languages, religions and socioeconomic classes live in this city (4). The study was conducted at a free-for-all public gathering at city's largest trade and exhibition center, The Expo Center, in October of 2009 (5).

A 10-questions survey instrument was designed and tested. Autonomy, beneficence, confidentiality, 'do no harm' and equality were considered as the patient's rights. 'Doctor-shopping', non compliance with physician advice, hiding information from ones' physician and asking for medical coverage were among the patient's duties. Definitions of patients' right and duty were adapted from multiple sources. Patients' right was taken

Patient's Rights and Duties: Survey from Karachi

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Abstract

Background: In the technologically underdeveloped society, it is a common belief that patients are not aware of their rights and duties. The theory of paternalism dictated the medicine man and still continues to do so in third world, developing nations.

Objective: To assess the awareness and knowledge regarding patient's rights and duties, of upper and middle socioeconomic classes, living in a cosmopolitan city of Karachi, Pakistan.

Methodology: After institutional permission, a 10-questions survey instrument was designed and tested. Data was collected at a public awareness program open for all residents of Karachi. Autonomy, beneficence, confidentiality, 'do no harm' and equality were considered as the patient's rights. 'Doctor-shopping', non compliance with physician advice, hiding information from ones' physician and asking for medical coverage were among the patient's duties. Descriptive analysis and scoring was done using SPSSv.16.

Results: Out of the total of 269, 200 (74%) knew that they have right over their doctor's decision. Most 211 (78%) assumed their physicians did not share their information with others. Many, 167 (62%) thought that their doctor do not give favor to others over them. Just 18 (7%) reported non-compliance, while 102 (38%) revealed that they did consult and followed medications of two physicians for the same disease, simultaneously. Few, 19 (7%) hide important information from their physician.

as expression of something, which everyone fundamentally and logically expects from a HCW in general.(6) Patients' duties varied from the prima facie duty of compliance by adhering to the treatment prescriptions to duties of truthfulness and to seek and access healthcare responsibly (1, 7).

Convenience sampling was adapted. Since there has been no study of the sort in the region we the calculated sample size of 269 was based on average 50% prevalence and 90% confidence level. Three trained research officers were asked to interview the participants of the event.

Data was double entered and analyzed in SPSS v.16. Descriptive statistics were calculated. Later, scoring for duties and rights questions was done, according to the responses given by the participants. Each correct question had a value of one mark. There were no marks deducted from wrong answers. Rights were scored from 1 to 5 and duties were scored from 0 to 4, depending on the minimum and maximum number of correct questions answered by the participants. Fiftieth percentile was taken as a reference to judge the level of awareness and knowledge. Outcome variable was taken as number of correct answers and the score of the participants. Institutional permission from the event organizers, Dow University of Health Sciences was taken before data collection. Each individual participant was asked to give verbal consent before the five minute interview.

Results

The median age with IQR of the study population was 28±14 years. Characteristics of the study participants is given in Table 1.

There were five questions pertaining to patient's rights in our questionnaire. Out of 269 people, 200 (74%) knew that they have the right over your doctor's advice or decision. Majority, 190 (71%) believed that their doctor will always make the best decision for them. Similarly 195 (73%) thought that their doctor would not take any harmful decision. Inquiring about their knowledge on their doctor's ethical and legal boundaries, 211 (78%) assumed that their physicians can not disclose their disease status to a third person. Opinions on favoritism concerning class, creed, gender or religion, by doctors had 167(62%) showing concerns.

There were four questions asked to check the level of awareness of the patients towards their duties. As a patient, 251 (93%) agreed that they respected and followed their doctor's advice. Few 18 (7%) subjectively reported non-compliance. Though, 102 (38%) reported following treatment regimes of minimal of two doctors simultaneously for the same disease. Most, 250 (93%) agreed to share complete information with their physicians, however 19 (7%) had opposite opinions. Two hundred and thirty six (88%) were aware of an employee's right for health coverage and recommended that all employees irrespective of their job rank should have medical coverage.

Scoring of the level of awareness and knowledge is shown in Figures 1 and 2. Data showed that 50th percentile of the scoring regarding rights and duties was 4 and 2, respectively. The majority, 213 (79%) participants scored below the 50th percentile on questions

regarding their rights. Few, 95 (35%) scored 4 out of 5. Similarly, 166 (62%) of them scored below 50th percentile regarding their duties. Almost half, 127 (47%) scored high with score 3 out of 4.

Discussion

Our findings summarize that the residents of Karachi belonging to upper and middle socioeconomic classes are less aware of their rights but comparatively well aware of their duties.

Human life and health has the utmost importance in human rights (6). It has been reported that people of developing countries are unaware of their medical rights (8, 9). We also found only 20% of our study participants scoring above the cut off. Remaining needs to be empowered and informed of their birth and civil right to appropriate medical care. This may reflect the wide differences among people from developing countries belonging to different cities and towns. Ironically, our people are not empowered by any means to know their rights. Neither their school curriculum nor the philanthropist of our society has ever attempted to explain the rights to the citizens. Government has limited role in developing and safeguarding the healthcare system of Pakistan.

One has to be cautious about the topics such as rights in healthcare as they can be misleading or damaging. Smith M. explains how it is so to conclude that as the world is evolving and having its effect on the doctor-patient relationship, it is of pivotal importance to maintain a balance of rights and responsibilities in healthcare (10). Often separate frameworks need to be designed according to the sub-specialties involved to prevent injustice (11). In today's world of advance technology it is even more important for the people to know of their rights to refuse and accept treatment options. Market driven decisions are often risky for the patients if not for the pharmaceutical, institute or the HCWs involved (12). Most of our respondents (71%) assumed that doctors can not harm them and would always decide the best for them. The patients should however keep a watch out for unethical doctors in the area. More than half (62%) did not believe that HCWs would think about class, creed, gender or religion while making clinical decisions for their patients. It shows that the theories of paternalistic still run in mind of our society and the people trust any authoritative person with their important life decisions. This reflects the general culture in our region. In our data set, 74% were aware of their rights over their physicians' recommendations for treatment. This aspect is a satisfactory element and can help us to be a budding point to teach the rest of the healthcare rights to the people of Karachi.

On the opposite end, the study participants were well informed of their duties. Though original research and literature is scanty regarding patients' duties, however duties of the HCW are mentioned in the literature (1). Few have studied the patients' duties in depth. Resnik argues that patients have a moral duty of compliance and have a duty to protect the health of others. Patients do not have the right to refuse treatment if this act of non-adherence would threat other people (1, 7). This adds to

the moral duty of the patients as a person living in a society. If one is not interested to fulfill the duty of compliance towards their physician, should we even expect them to fulfill their duty of not harming other human beings by not taking treatment. We found 93% participants who respected and followed their doctor's advice. Only 7% subjectively reported non-compliance which can be an underestimation. Approximately 7% also agree to hide information from their physicians. These figures can be diluted due to the fact that patients in our city usually visit more than one physician before starting treatment prescribed by one or more of them.

Even proposed ten duties in a spectrum of events related to patients. They included duties, to participate in 'healthcare jurisdiction', to uphold his own health, to protect the health of others, to seek and access healthcare responsibly, of truthfulness, compliance, inpatient conduct, of recovery or maintenance, research participation and citizenship. The characteristics of all these duties are based on moral force, extent and enforceability.(1) The effect of local culture cannot be ignored while discussing moral obligations and duties of the people living in a society. Karachi is a cosmopolitan city with a mixture of belief and moral values. Myths and distrust also go along such believes. Each ethnicity brings a different element to this believe system and on the whole shape our societies practices. Up till a few years back and even to date in a few areas of Karachi antenatal check up or maternity care was not considered a right for the mother and her unborn child. Health inequality is as prevalent in our society as the influence virus. Only the affording can survive and the rest can neither prevent illness nor disability (13). In general there is lack of organization and compliance to any rules in our society. This is reflected by our finding that 38% accepted following multiple treatment regimes simultaneously for the same disease despite counseling.

Table 1 Characteristics of study participants

Characteristics	Frequency (%)
Male	189 (70%)
Female	80 (30%)
Single	146 (54%)
Married or Engaged	123 (46%)
Academic Standing	
Did not get formal schooling	6 (2%)
Matriculation(level 10)	16 (6%)
Graduation	146 (54%)
Post Graduation	101 (38%)

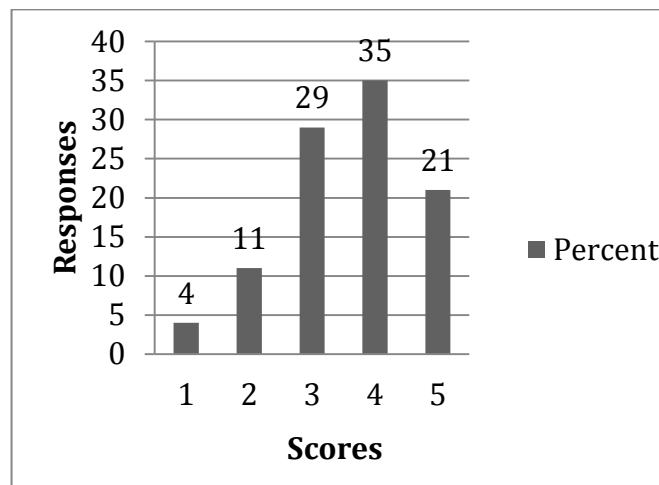


Figure 1 Participants' Score Regarding their Healthcare Rights

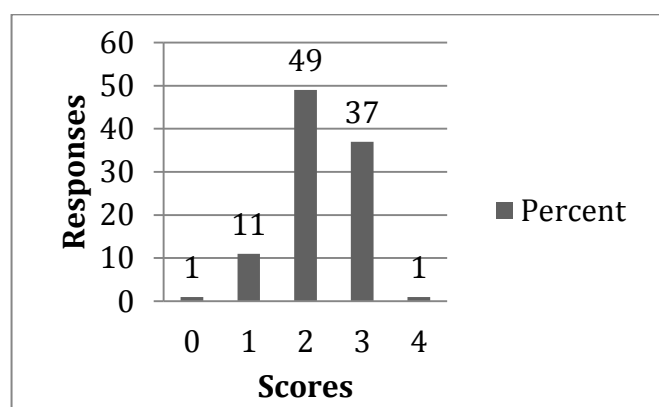


Figure 2: Participants' Score Regarding their Healthcare Duties

Conclusions

The strength of this study is that we captured the opinion of the general public awareness at a public place without any institutional influences to dictate a bias opinion of the participants. In a hospital setting, patients and their attendants fall prey to therapeutic misconception or are still unconsciously targeted for their true opinion. However, one of the weaknesses is that though this public gathering was open for all socioeconomic strata of the society but mostly middle and upper class participants were present on the occasion. The level of understanding to the culture and educational background might have influenced their opinions. Therefore, our results are only a conclusion for selected strata of society and do not reflect the general masses. Also, the survey had subjective questions related to non-compliance, seeing two physicians at the same time and hiding information from their physician.

The results are contrary to the belief that people from upper and middle socioeconomic classes in Pakistan are aware of their rights and duties as patients. However, the level of awareness and knowledge needs improvement.

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