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Moral dilemmas and health care practices

ABSTRACT

The emergence of moral dilemmas in health care practices, in view of the rapid demographic transition in developing countries, and skyrocketing public health care costs, is discussed. The focus is on two aspects of health care that have occupied an important place in the generation of these dilemmas. On the one hand, the tension between commercial strategies involving the health products market and the expansion of access to them and, on the other, the growth of techno-sciences in health care practices. In conclusion, the importance of the political, social and juridical arbitration on the ethical codification of those dilemmas and the role of a Democratic State of Law in that arbitration is discussed.

DESCRIPTORS: Conflict (Psychology). Morale. Bioethical Issues. Public Health Practice. Biomedical Technology, ethics.

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INTRODUCTION

The complexity of health care is an issue which has moved to become the center of concern for citizens, collectives and State policy. The reasons are as varied as they are connected and the many dimensions of health care occupy political, economic and social debate at a national and global levels. Analyses on the relationships between levels of health care and the country's level of development, such as those carried out by the North American economist Jeffrey Sachs, indicate that health care has moved from being a dependent to an independent variable in relation to development.[3] From another perspective of cause and effect, this movement occurred at the same time as increased life expectancy and a stratospheric increase in the cost of national health care systems.

This position of political, economic and social centrality has generated an increasing number of moral dilemmas, waiting for an ethical codification which will enable them to be properly judged so as to benefit the subjects of health care actions.

Bioethics, the creation of which is attributed to the North American Oncologist Van Rensselaer Potter in 1970, is considered to be a type of "applied ethics", something which emerged after the Second World War. Its reflections and contributions have been intensified in the area of general health care practices.[1] According to the Brazilian Bioethicist, Fermin Schramm, a taxonomy of bioethical interventions in the field of human health was recently suggested by Reichlin,[4] this being: applying moral principles to biomedical problems in general (for example biomedical research in the area of genetics and regenerative medicine), methodology for being making moral judgments of clinical cases (for example, the intense discussion on protecting subjects of human research) and public investigation of the moral dimension of sanitation problems (for example, debates about the doctrine of "possible reserves" which animated public hearings on the provision of public goods and health services in the Supreme Court in 2009.

Among the countless controversies created by the interface between bioethics and health care practices, this article aims to concentrate on two, for their importance and scope. The first is the growing tension between access to objects essential to protecting health and commercial interests surrounding them, in particular, access to medicines. The most striking example of this tension on a global level is in the intensification of the application of intellectual property legislation, based on patents and restrictions, to access to medicines. The second aspect of the intersection between moral dilemmas and health care practices are those resulting from the growing and overwhelming participation of techno-science in bodily and mental interventions aimed at preserving and recovering health.

The aim of this article is to discuss the emergence of moral dilemmas in health care practices in view of the accelerated demographic transitions taking place in developing countries and the increasing costs of public health care systems.

COMMERCIAL STRATEGIES AND ACCESS TO HEALTH CARE PRODUCTS

The laws of the patent regime, as we understand it today, have their roots in those instituted at the end of the 19th century in the Paris Convention for the Protection of Industrial Property (1883).[a] According to these principles, patents are temporary monopolies, the principal stated objectives of which are to privilege and stimulate the spirit of invention in individuals and provide the inventor with financial recompense for the costs of the invention process.

However, during the 20th century, two independent phenomena emerged which were, to a certain extent, concurrent and synergetic. The first was the development of mass consumption markets of industrial products in the first decades of the 20th century, with a second wave after the Second World War, in the United States,[2] later followed by other parts of the world. The second is a result of the increasing use of technology in health care, understood as the inclusion of industrial products, with a high degree of science-based technology incorporated into them, as fundamental items in health care system practices and, consequently, their increased presence as products for mass consumption.

It is possible to argue that the development of mass consumption has just intensified commercial conflicts between competing firms, something considered necessary for creating wealth and economic development according to the capitalist framework. However, I would like to stress two specificities that arise when the development of these kinds of markets comes to health care. Specificities that can produce commercial conflicts and impacts on the field of ethics as well.

In global terms, the two industrial sectors in which the regime of protecting intellectual property through patents is more dynamic and produce controversy are the electronics industry, especially the area of communication and information technologies, and the area of health care industry, in particular medicines and, more

[a] van Dijk T. The economic theory of patents: a survey. Maastricht: Maastricht Economic Research Institute on Innovation and Technology; University of Limburg; 1994 [cited 2012 May 17]. Available from: http://www.merit.unu.edu/publications/rmpdf/1994/rm1994-017.pdf

recently, vaccines. The first specificity is presented making use, in an imperfect frame, of the economic concept of "elasticity". It is possible that, in the health care industry, there is a higher level of "inelasticity" than in information and communication technologies, as well as in other industrial sectors.

Low consumption patterns for electronic communication products are tolerable and impact only slightly on people's well-being. Looking at the argument from another angle – that of inequality –, it is perhaps not so relevant that more i-pads *per capita* are consumed in Canada than in Bolivia. Moreover, even for those who feel they cannot live without these products, it is possible to create a wide hierarchy in their adhesion, which includes the quantity and sophistication of the equipment. However, in the health industry, the degrees of freedom are, frankly, more restricted, especially with regards to medicines and vaccines, whether because of the impossibility of living without them or the possibility of dying if there is no access to them.

It is from this greater "inelasticity" that the second particularity of the health care industry comes. In contrast to other industrial sectors, health care patents on products generate significant moral conflicts because life and health are basic human rights, present in the 1988 Brazilian Constitution.

An example of a moral dilemma with which Public Health in Brazil was recently confronted is the so-called "judicially enforced health delivery". This is the popular name given to the effect caused by crossing an interpretative gap in the concept of 'comprehensiveness' in the law which created the Brazilian Unified Health System (SUS) and the pharmaceutical industry seeking to increase the provision of medicines paid by the State which are not always backed up by sufficient evaluation of their cost-effectiveness. In practice, the "judicial delivery" is expressed by legal demands to guarantee access to products and services not covered by current public health system norms. In 2011, the Ministry of Health disbursements for medicines obtained through legal decisions reached R$ 243 million and, in 2010, in the state of Sao Paulo, Southeastern Brazil, this figure was R$700 million.[b]

The so-called "judicial delivery" posed a more complex moral dilemma than usual as tensions between patients and access tend to be expressed by restrictions in access. In the case of the "judicial delivery", the tension was expressed by an "irrational" increase in access. Moreover, the dilemma is exacerbated by the confluence of three interests, these being: (1) the right of the citizen to comprehensive health care; (2) the commercial interests of the health care industry and (3) SUS difficulties expressed by insufficient funding and in the fragility of their still incipient apparatus for assessing technology.

Regarding the crisis faced by the global pharmaceutical industry, regulating intellectual property through patents has, since 1994, been experiencing highly undesirable attempts to deepen the *Trips* agreements and, more recently, with various initiatives, known collectively as *Trips-Plus*. Together, *Trips* and *Trips-Plus* aim to facilitate the granting of patents and to impede defensive mechanisms of national states aiming to increase their population's access to medicines and other industrialized health care products.

It is noteworthy that this upsurge coincides with a worsening of the pipeline crisis in companies, expressed by a significant reduction in the registration of truly innovative molecules since the mid-1990s. This concurrence suggests a subversion of the original concept of patents – to stimulate innovation – as the pipelines innovation crisis was established and developed with the patent regime being in force, and even after the global 'harmonization' produced by the *Trips* agreements.

However, the Brazilian government has been blazing a trail of not complying with *Trips-Plus* measures. Moreover, there is also increasing resistance to those measures on the part of academic bodies and society. Of these, the Global Congress on Intellectual Property and Public Interest, which took place in Washington, August 2012,deserves a mention, for its scope.[c] The outcome document presented in this event was as follows:

> *International intellectual property policy affects a wide range of interests in society, not just the rights holders. Thus, the formulation of intellectual property policy should be carried out with mechanisms of transparency and openness which incentivize widespread public participation.*
>
> *It cannot be assumed that the markets alone will reach a fair allocation of intellectual assets – that is, to promote the whole range of human values which are at stake in systems of intellectual property. This is clearly demonstrated, for example, based on recent experiences in the area of public health and education in which intellectual property has made progress in meeting these basic public needs more difficult.*

[b] Segatto C. O paciente de R$800 mil. Rev Epoca. 2012 mar 23[cited 2012 May 15]. Available from: revistaepoca.globo.com/tempo/noticia/2012/03/o-paciente-de-r-800-mil.html

[c] American University Washington College of Law. The Washington declaration on intellectual property and the public interest. Washington (DC); 2011 [cited 2012 Oct 15]. Available from: http://infojustice.org/washington-declaration?doing_wp_cron=1350340934.6218049526214599609375

TECHNOSCIENCES AND MORAL DILEMMAS IN HEALTH CARE

In order to examine the second root of moral dilemmas in the field of health care, the original concept of techno-sciences, proposed by the Belgian philosopher Gilbert Hottois in 1978, is used. It deals with the entanglement between spheres of knowledge creation based on scientific methodology and on the development of techniques which includes both practical applications of that knowledge in the productive sphere as well as increasing the reproduction and advancement of science itself.

A large number of these moral dilemmas develop based on advances in understanding biological mechanisms at a molecular level. And, demonstrating the interconnection between the three levels of epistemological statutes of bioethics mentioned above (biomedical, clinical and public health), the moral dilemmas resulting from techno-scientific manifestations associated with advances in molecular biology are widely and equally distributed in the practices of laboratory research, in clinical interventions and in decisions in the area of health care policy. To these fields are added the dilemmas resulting from tension between techno-scientific advances and non-hegemonic cultural standards. In this regard, the difficulties this country has in conciliating access to genetic resources with the aim of research and development with rights of ownership acquired by populations possessing distinct cultural patterns (indigenous, *caboclos* and *quilombolas*, among others) is highlighted.

There have been a series of episodes relating to moral dilemmas resulting from techno-scientific advances in Brazil. Among them, the definition of the concept of death in order to regulate organ transplantations, the debate on access to natural resources and the rights of those who make use of them, assisted reproduction technologies, stem cell research, the right to die with dignity (a topic for which the Federal Council of Medicine recently made an important contribution to its ethical codification with Resolution 1,995), ethical assessment of research using human beings, abortion of anencephalic fetuses and the abovementioned "judicial delivery" of health care, among others.

ARBITRATION OF MORAL DILEMMAS IN HEALTH CARE

Whether the moral dilemmas result from tensions between commercial interests and access, or from techno-scientific advances in the area of health care, in Brazil there is a relatively positive balance with regards to the ethical coding resulting from these discussions. On the whole, this result is due to the prevailing Democratic Rule of Law, with the regular functioning of the institutions which formally represent it. Moreover, these results are also due to societal participation, whether organized or not, in public debates on these topics.

However, recent demonstrations against federal and state regulatory measures aimed at banning or reducing harm from social practices which are recognized as damaging to health have also been observed. The main ones are prohibiting smoking in enclosed public spaces and prohibiting the presence of alcohol in the blood of those driving vehicles. On the other hand, there are also protests against regulation in the sales of medicine, against advertising bans of foods with components which are known pathogens and against the regulation of assisted reproduction practices, among others. The general tone of these critical demonstrations is directed at what would be a restriction of individual civil liberty derived from misplaced state intervention.

Such criticisms attack the political philosophy when they state that it is not a State duty to arbitrate and regulate social practices which produce moral dilemmas greatly impacting on society. But if not the State, who? Who else, in modern society, has the authority to carry out this task? A large part of the dilemmas are arbitrated by citizens themselves, but there are many which are not, especially when an individual's decisions have a large impact on the decisions of other individuals. Thus, the existence of codes, laws and other norms. In these cases, the arbitration of moral dilemmas is the responsibility of the State, one of its powers or a delegated body.

CONCLUSIONS

All of the issues raised above are moral dilemmas which have great social impact. And, as with any moral dilemma, they are not subject to "natural laws". Each case is unique, to be socially agreed, politically arbitrated and legally sanctioned. The Democratic Rule of Law under which we are living, offers the environment most conducive to agreement, arbitration and sanction. However, we must exercise our dedication to demand appropriate measures to protect the public. The alternatives are barbarism or the "market invisible hand", which, in a certain sense, is barbarism put in other terms.

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