

Justice Viewed from a Care Perspective

Franziska Krause

University of Freiburg

Institute of Ethics and History of Medicine

Stefan-Meier-Str. 26, D-79102 Freiburg i.Br.

mkrause@egm.uni-freiburg.de

Abstract

My presentation will focus on the question of how care-ethicists describe justice, and to be more precise: justice in modern health care with special emphasis on the physician-patient relationship.

In the following paper, I would like to give a short introduction to the intensified conflict of the physician's professional role in modern medicine and I will argue for the relevance of the physician-patient relationship in the context of justice. In the next step, I will characterise the ethics of care as an approach of normative ethical theory. The ethics of care puts a special focus on relationships and the particular other (what exactly is meant by that I will figure out later). On the basis of this focus I will examine whether the ethics of care can add new aspects to the question of how to deal with problems of justice in modern health care with regard to the physician-patient relationship. In particular, I will take into account the position of Michael Slote and his recent book "The Ethics of Care and Empathy"¹ where he states that the ethics of care are able to deal with questions of justice. Among other things that I cannot mention in this context, Slote suggests the distinction between personal and humanitarian caring in order to clarify our moral obligations to help others. To conclude this discussion, I will come back to the questions of what the ethics of care can contribute to the discussion of justice in health care and which consequences can be drawn for the physician-patient relationship.

Keywords: The ethics of care, justice, Michael Slote, physician-patient relationship

¹ Slote 2007, p. xiii.

Why questions of justice and care are important for the physician-patient relationship

The physician-patient relationship is subject to changes, such as new technological devices, pharmaceutical interventions and utilization review. They redefine medical practice insofar as the physician is not just responsible for her patient's health but she is also accountable for acting under social and economic considerations.² As Pellegrino points out: "The physician is the 'gatekeeper' and, as such, is morally and legally responsible simultaneously to the patient, for providing access to health care, and to the managed care system, for limiting that access."³ This might lead to an "erosion" of the physician-patient relationship because it is unclear for the physician to which extent she has to assume these different responsibilities that can be regarded as mutually exclusive. As Soren Holm states: "The professional cannot at the same time be the agent of the patient and the agent of the system."⁴ The fact remains that the physician combines elements of rules and norms as well as elements of care in her profession. She is confronted with the actual patient she wishes to take care for and the possible dilemma of considering the legitimate claim for adequate care by all other potential patients. Very often justice and care seem to be contradictory in clinical practice.

In the following paragraph, I will consider justice not at the macro-level of our health care system but at the physician's level: justice applied to the particular patient in conflict with the needs of all potential patients waiting for health care. Of course, my premise is that there is a conflict, respectively that the physician cannot always meet the demands of the particular patient *and* the demands of all other patients. So the next question will be: What can a care ethicist tell us about a physician's decision on where to draw the line between his professional obligation for her particular patient and the acceptance of a health care system that is obliged to weigh up different interests?

The Ethics of Care

First of all, I would like to give some brief indications on what the ethics of care means and what kind of normative force can be exposed in contrast to "theories of justice". Prior to Carol Gilligan's "In a different voice"⁵ scarcely anyone had spoken of an "ethics of care". However, there is a tradition of care in the ancient Rome (Seneca) with "cura" as burden or solicitude, as well as care in the sense of Christian agapic love, in mediaeval literature, as well as in Kierkegaard's and Heidegger's writings⁶. What made Gilligan's book so special was her intention to show that boys and girls apply different moral themes and concepts when they resolve moral dilemmas. In her psychological study about the moral development of boys and girls she figured out that girls tend to argue in terms of personal attachment. However, boys stress the equality of individuals. In general, Gilligan stated that girls more often adopt the care perspective as their "moral voice" whereas boys make use of the so-called justice perspective. A heated debate about the relevance of Gilligan's thesis for the nature of morality

² Whereas the insight of the necessity of "rationalisation and rationing" in health care is widely accepted, the right way of implementation is controversially discussed in bioethics.

³ Pellegrino 1994, p. 312.

⁴ Holm 2011, p. 96.

⁵ Gilligan 1982.

⁶ Reich and Jecker 2004.

and the consequences for moral theory, especially in regard to gender issues, arose. For this paper it is important to mention that Gilligan's "In a different voice" encouraged philosophers to reconsider aspects of moral judgment such as context-sensitivity, particularity and relations as important. This philosophical discussion is nowadays subsumed under the topic of the ethics of care.

Nevertheless, the ethics of care is also criticized for not being a fully developed ethic or for the possibility that the core concept of the ethics of care, namely caring, can lead to neglect oneself as it may lead to burdensome responsibilities. However, one of the main arguments against the ethics of care is that it cannot be extended to the institutional and to the social-political level and remains a "touchy-feely" approach. Let me explain what I exactly mean by that.

The ethics of care is one perspective amongst others in ethics that focuses on the moral evaluation of actions based on the relation between two persons and the human capacity to respond to the needs of others. That is why care can be defined as an attitude towards others as well as a morally relevant practice⁷. It is relevant practice as well as an inner obligation to be aware of other person's problems. Obviously, as the ethics of care concentrates on human relations and people's attitudes and motives of action, it highlights the uniqueness of a situation. Acting in the right way is tied to a person's internal state rather than to social norms or to an evaluation of consequences.⁸ Therefore, one might say that an ethics of care is concerned with the *subjective* issues of a moral dilemma, while justice - in the same situation - deals with the question of how to avoid *objective* unfairness. Or to quote Yuval Livnat: "While benevolence as a central, but also controversial, aspect in the ethics of care is a purely other-regarding virtue, justice is all-regarding."⁹ So it seems plausible that justice-based theories, not an ethics of care, can contribute to the discourse of a cooperative social coexistence. What matters is impartiality that takes everyone's interest into account in order to establish rules and principles and independent reasoning to ensure that decisions are not made out of bare prejudice. Care is often merely seen as a supplementation to any theory of justice. This is due to its adherence to the individual human relations instead of generating universal principles. Nel Noddings, as a care ethicist that sharply distinguishes between a care orientation and a justice and right-based orientation respectively, does not consider this as a problem. By attributing "care" a moral superiority to justice orientation, she warns of the consequences a rule-based ethics could have: "Rules are formulated and the characteristic variation in response to the needs of the cared-for may fade away. Those entrusted with caring may focus on satisfying the formulated requirements for caretaking and fail to be present in their interactions with the cared-for. Thus, caring disappears and only its illusion remains."¹⁰

The idea of balancing in Slote's theory

If it is central to the ethics of care to consider the particular other as well as his needs and interests, then the question arises of how to treat people one barely knows. Michael Slote is arguing for an ethics of care that can establish a plausible view on justice on its own. In his book "The Ethics of Care and Empathy" he suggests a definition of the ethics of care that

⁷ Conradi 2001.

⁸ This does not mean that care ethicist do not additionally want to evaluate the results of an action.

⁹ Livnat 2003, p. 508).

¹⁰ Noddings 1986, p. 25-26.

“treats acts as right or wrong, depending on whether they exhibit a caring or uncaring attitude/motivation on the part of the agent”¹¹. As for all care ethicists, the motives and the state of a person’s character as well as her relations to others are fundamental to the moral judgment. Unlike authors of an ethics of care as Virginia Held he does not additionally evaluate the results of actions for effectiveness¹². However, he admits that one has to attempt to produce good consequences¹³. Furthermore, principles or other assertions, e.g. about the good life, are construed as a derivative form of caring motives. If it is important for morality to have a caring relation based on empathy and - in fact - we cannot be intimate or even acquainted with every human being whose actions are morally significant for us, something should be said about our moral obligations towards strangers. Do we even have moral obligations towards them? Slote argues that we do have, however, in contrast to an utilitarian like Peter Singer he rejects the idea that the moral obligations towards strangers are as morally relevant as the obligation to help those who are close and well-known to us¹⁴.

First of all, all human beings are equipped with self-concern or an obligation to develop ourselves, which prevents us from phenomena such as burnout. Offering care is a demanding task - in physical as well as in emotional regard - and to care appropriately presupposes not to care in an exhausting and self-rejecting way. However, the other possibility of a selfish self-concern seems to be eliminated by Slote, too. He argues that “someone whose concern for self is counterbalanced by genuine concern for others isn’t selfish”¹⁵.

Secondly, Slote emphasizes the care for one’s intimates. We have a *special* and stronger obligation towards our family members, friends and life-partners than for people who are distant to us¹⁶. This obligation is a “separate moral category”¹⁷ in contrast to the broad concern for those one does not know. The well-known example by Bernard Williams shows that this conception is quite intuitive. A man who is confronted with a choice between saving his drowning wife and saving a drowning stranger decides to save his wife. Thus, sometimes it is better to act from feeling than to act from a moral principle that may lead to “one thought too many”¹⁸ and may hinder the rescue of both.¹⁹

Nonetheless, acts that demonstrate empathic concern for near and dear count as wrong if they show a lack of empathic concern for people we don’t know. Slote is using the following example to illustrate this: Refusing to save a drowning child one has never seen before in order not to disappoint one’s daughter by being absent when she returns home from school seems to be wrong. This is not morally wrong because of realising a need and than deducing the obligation to help the drowning child. It is rather a question of whether there is “a problem that we perceive and/or that affects us right now”²⁰. The immediate empathy with the drowning child is what makes us acting morally.

¹¹ Slote 2007, p. 21.

¹² Held 2011.

¹³ Slote 1998, p. 32.

¹⁴ Slote 2007, p. 21.

¹⁵ Slote 1998, p. 30.

¹⁶ Slote 2007, p. 116-121.

¹⁷ Slote 1998, p. 28.

¹⁸ Williams 1981, p. 18.

¹⁹ But unlike Williams, Slote has taken this case as a paradigmatic instead of an exceptional case of morality.

²⁰ Slote 2007, p. 27.

In cases of contradicting claims on the moral self, Slote is introducing the idea of balancing. To ensure that one does not “get swamped in the huge sea of all the other interests of humanity”²¹, self-concern should be balanced against concern for others *considered as a class*. Thus, it is easier to consider one’s intimates because they will be treated as individuals whereas the concerns and interests of others are cumulated. Concerns about oneself and one’s family will not be automatically outweighed by considerations involving larger groups. Slote gives two more specifications of how to conceive this balance. He distinguishes between the *depth* of concern or caring and the *breadth* of concern or caring²². Love is in some sense deeper than mere sympathy or humane concern. However, unfortunately, how exactly we have to understand the process of balancing remains quite unclear. For example, what is the right balancing of caring *between* our intimates –parents, children, spouse, brother, sister, friends, and loved ones? Are there substantial things we should care for that cannot be balanced?

For Slote, this question remains already vague concerning our moral obligation towards strangers: “So we have moral obligations to help strangers and people we only know about, but I propose at this point to remain somewhat vague about just how strong these obligations are.”²³ Slote further mentions that it is not about (approximate) equality in the idea of balancing, but „non-lopsidedness between concerns“²⁴.

He seems to assume that our moral intuitions and the capacity for empathy suffice to decide which actions are wrong or right and lead to situations where people in general are better off²⁵. With emphasizing the influence of intuitions for moral evaluations, he supports subjective grounds for moral reasoning. The problem here is that he does not scrutinize how this empathy (as a basis for moral judgments) is going to be transferred into a positive form and avoids purely naive and counterproductive forms for the individual and for society. He seems to assume that empathy is sufficient for avoiding discriminatory attitudes by experiencing another person’s situation as if one thinks in somebody’s shoes. Further, Slote concedes that children with a normal capacity for empathy develop habitual associations that „underlie and power (the use of) moral principles or rules“²⁶. It is an intricate problem to argue with Slote’s theory how (wrong) attitudes of persons can be changed, because any normativity seems to be tied to „uncritical intuitionism“²⁷ in terms of empathy.

For now, it is important to keep in mind that Slote argues for an ethic, that caring for intimates is more plausible and of stronger obligation than caring for others. According to psychology literature Slote is referring to, he states:

„Agents are more empathic and empathically concerned with what *they perceive* than with what they don’t; and they are also empathically more sensitive to *what they know to be going on at the same time* as their decision making and choices.“²⁸ One might comment on this empirical findings that they do not tell us anything about moral norms; that we cannot

²¹ Slote 1998, p. 179.

²² Slote 1998, p. 180.

²³ Slote 2007, p. 33.

²⁴ Slote 1998, p. 180.

²⁵ According to Slote, to make people better of is the moral quality in the ethics of care (and not sustaining caring relationships). Slote (2007). *The Ethics of Care and Empathy*. New York, Routledge, p. 119.

²⁶ Slote 2007, p. 15.

²⁷ van Hooft 2011, p. 151.

²⁸ Slote 2007, p. 43.

judge from is to ought or that opinions like that confuse “actions or decisions that have moral significance with moral judgments”²⁹ like John Harris is warning. For Slote, empathic reactions correlate with moral judgments, motives for action have justificatory power. Empathy can be strengthened by connections among family members, friends and life-partners and temporal and perceptual immediacy. Thereby it also strengthens the concern for distant others³⁰. Though Slote does not elaborate the exact connection between intuitive empathy and the normative substance of that empathic concern. Are actions wrong because they show a lack of empathy in the agent or do they show a lack of empathy in the agent because the actions are wrong? For Slote, it is rather a question of what our near and dear and affected people of an action perceive us in that situation – caring or uncaring – than which action might be right or wrong. In this sense Slote’s approach is not action-guiding, but more a post-hoc evaluation of performed actions³¹ that can strengthen the attentiveness for acting morally right in the future. The level of objectivity, that is important for any moral theory, is introduced by the moral reasoning of others and not by the caring agent himself.

But what can Slote’s position imply for the topic of this paper? How can we describe the physician-patient-relationship by the care approach of Slote?

Implications for medical practice

At the first glance, Slote’s point of view shows that it is more important to be attentive to the particular patient than to restrict for example medical treatment because of potential patients who could benefit more of this treatment. This means not that the interests of the potential patients will not be considered by the physician. However, as far as I understand Slote, the interests of potential patients cannot outweigh the dependence of the particular patient face to face with the physician. The patient may probably not be an intimate of the physician. However, there is the direct and actual perception of the other’s need, the patient. All obligations that exceed this direct answer to need, are called a supererogatory act by Slote³². Thus, doing something for distant people is praiseworthy. However, it is neither a moral requirement nor the duty of the moral agent or - in our case the physician. According to Slote, a more than „fully developed empathy“ is necessary for supererogatory acts. For ordinary people, it is not expected to go beyond their moral duty³³. Nonetheless, he insists on the fact that caring acts for near and dear count as wrong “if at the same time they show a lack of normally or fully developed empathic concern for people we don’t know”³⁴.

In medicine, the term care carries great weight. Some forms of cure derive from caring. It is not only the physician’s technical knowledge that helps restoring health, but also a kind of personal attentiveness to both: the physical and the emotional components of illness. The physician should offer the most possible appreciation of the patient’s values and concerns as well as support for the particular patient. Of course, patient autonomy in the sense of self-

²⁹ Harris 2012, p. 297.

³⁰ Slote 2007, p. 28.

³¹ White 2009.

³² Slote 2007, p. 34.

³³ Supererogation is defined here as going beyond moral duty. Other definitions of supererogation, such as “having greater merit” and “morally good but not required, with no implication either of superior merit or of going beyond duty” is introduced by Lawrence Blum Blum (1988). "Gilligan and Kohlberg. Implications for Moral Theory." *Ethics* 98(3): 472-491, p. 489-490.

³⁴ Slote 2007, p. 31.

determination is enforced in the last decades, however, the physician has a special responsibility towards his patient. Physicians are still translators of medical information to their patients, they give recommendations and they remain the experts for definitions of disease. The core concept of a physician's responsibility for the patient - as it is described in the Hippocratic oath: "And I will use regimens for the benefit of the ill in accordance with my ability and my judgment, but from what is to their harm or injustice I will keep them"³⁵. This responsibility is going to shift away from physician expertise to organizational efficiency as requirements like "rationing" find one's way into everyday medical practice³⁶ However, what could a care ethicist like Slote respond to this development in modern medicine?

Slote does not cease to say that empathic concern is merely something to be located at the level of personal relationships. He rather suggests to transfer the concept of empathic concern to social practices and institutions.

„So an ethics of empathic caring can say that institutions and laws, as well as social customs and practices, are just if they reflect empathically caring motivation on the part of (enough of) those responsible for originating and maintaining them.“³⁷

In accordance with the paper's topic, one can argue with Slote that questions like justice in modern health care are questions of the stakeholders' right motives as their actions are judged by expressed or reflective motives. These motives should be based on empathy and concern for patients' needs, at least stakeholders should not exhibit a *lack* of empathic concern³⁸. The advantage of Slote's opinion is the strengthening of the right motives for an action and the question of which actions express a "fully developed empathic concern". It is not the important here that he offers a model of how to exactly balance the interests of the market or all other patients waiting for care, the particular patient and the physician's responsibility. It is rather a reminder of what really should be the focus of interest in medicine while talking about justice in medicine: it is the particular patient and his need. Or like Virginia Held states:

“With the ethics of care and an understanding of its intertwined values, such as those of sensitivity, empathy, responsiveness, and taking responsibility, we could perhaps more adequately judge where the boundaries of the market should be.”³⁹

Conclusions

Now let me come to my conclusions. At the first glance, Slote offers an attractive approach of how to deal with the question of justice in modern health care. However, his differentiation in personal and humanitarian care lacks fundamental considerations because it remains quite vague about how to balance these two aspects of care, its function is not action-guiding. Nevertheless, it offers an opportunity to reflect the possibility that – when it comes to questions of justice – it is often not just the outcome of an action or the rights of individuals that are expressed by these actions, but also the motivation and the attitude of the agent that may count.

³⁵ Miles 2004, p. xiii.

³⁶ Pellegrino 1994.

³⁷ (Slote 2007, S. 94).

³⁸ (Slote 2007, S. 95).

³⁹ (Held 2006, S. 119).

A last point I would like to take into consideration is the following: Slote's position of care is not taken up by the major part of care ethicists. What I exactly mean is that if we favour someone who is our intimate, this attitude does not exhibit particular virtuous motives or dispositions, because it seems to be too self-centered. Quite the contrary is the case, caring for others - including strangers - is expressing apparently more caring motives than just promoting the relations to our loved ones. Caring should also involve people that are not right next to us and do not emotionally affect us. This point is applied by Slote when he is talking about humanitarian caring. However, he does not underline that caring for strangers may also be a *strong* moral obligation. In my opinion, the ethics of care should consider the claim for caring for others – in the sense of caring for and about strangers – more detailed to guarantee an ethics that is suitable for all moral questions, especially for questions of justice.

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