The Catholic Lawyer

Volume 9
Number 2 *Volume 9, Spring 1963, Number 2*

Article 6

Compulsory Medical Treatment - A Moral Evaluation

Robert H. Springer, S.J.

Follow this and additional works at: https://scholarship.law.stjohns.edu/tcl

 Part of the Courts Commons, Family, Life Course, and Society Commons, and the Religion Commons

This Article is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in The Catholic Lawyer by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

COMPULSORY MEDICAL TREATMENT — A Moral Evaluation

ROBERT H. SPRINGER, S.J.*

SEVERAL RECENT CASES have, in effect compelled parents to permit medical treatment of their minor children for the correction of physical deformity not involving the risk of death.[1] It has also been held that a minor should have psychiatric treatment when his behavior indicated that he was "suffering from some emotional instability."[2] In none of these cases, however, were religious beliefs clearly the basis of parental refusal.

The developments in the law involved in these decisions raise intriguing ethical issues which are the subject of this study.[3] Should our moral reaction be one of displeasure or approval at the sight of the state's overruling parental authority in cases where not life itself but physical health and emotional balance are the values at stake? We shall first consider the moral values pertinent to the general trend of law herein contained, then conclude with an opinion as to whether the courts have overstepped moral bounds in these decisions.

To evaluate this trend in the law, we should contrast the present configuration of the problem with its earlier form. The prior position of the law, from which this trend has developed, was that medical treatment might not be denied a minor child in danger of death. The classic case was that of Jehovah Witness parents of a child who would die unless a blood transfusion were administered. The courts authorized the hospital to give the transfusion notwithstanding the objection of the parents. Moral opinion holds that public authority would exceed its competence in forcing an adult to accept a transfusion for himself. This would be a gross abuse

* A.B., Georgetown University; Ph.L., Woodstock College; S.T.D. Gregorian University. Assistant Professor of Philosophy, Fordham University.

[1] See *In re* Seiferth, 127 N.Y.S.2d 63 (Child. Ct. 1954), *rev'd on other grounds*, 285 App. Div. 221, 137 N.Y.S.2d 35 (4th Dep't), *rev'd*, 309 N.Y. 80, 127 N.E.2d 820 (1955); In the Matter of Rotkowitz, 175 Misc. 948, 25 N.Y.S.2d 624 (Child. Ct. 1941).

[2] *In re* Carstairs, 115 N.Y.S.2d 314 (Child. Ct. 1952).

[3] See 8 CATHOLIC LAWYER 155 (1962) for a detailed discussion of the legal evolution

of personal inviolability. But in ordering medical intervention on a child to save its life, the state is within its rights. No matter what the beliefs of the parents, the certain right to life of the child is controlling.[4]

To take up the ethical issues in the later deeper penetration of the family domain by the courts, we should first ask what are the limits on state intervention. We suppose as established in moral science and recognized in our law the authority of the state in what pertains to the public welfare, as well as the prior rights of parents over their children. The question is to be answered principally in terms of what are the rights of the child. Rights are grounded in the person.

A Moral Norm

What kind of a person is a minor? Whatever his status in law as a person (considerations of the common welfare justify limitations on his personal freedom), in reality he is no less a person than his parents, substantially speaking. He is possessed of body and soul with all the powers of both. He has freedom of choice once he reaches the use of reason. He, too, has as his destiny his personal well-being within the spiritual community of God and men, both here and hereafter. The parents, then, are not the fashioners of his destiny. Nor do they determine his rights to the means of achieving that destiny.

He is, however, an immature person. He is in dire need of social assistance for his physical, psychological, intellectual and moral growth. Human experience and both law and morals teach that the parents have the prior right and indispensable duty of ministering to his tender wants. The immediate matrix of his nurture, then, is the family. But human experience likewise assures us that there are parents who are incapable of supplying these needs, or who are ignorant of their true nature, or finally who know and can but will not fulfill them. Accordingly it is the child that determines morally his right to nurture, that is, his needs as a person are a basis of the ethical right and duty of helping him to personal maturity.

Further, his needs are determined by the social context in which he exists. His immaturity demands fulfillment commensurate with the social progress of the culture in which he lives and works toward his destiny. He has a right to that kind and degree of human perfection in the world today which his family aided by society can reasonably provide him.

As for the role of government, it maintains the necessary external structure of law and order in the external community, which exists for the good of the person in society. It does not do what the family and other private associations can and will do for the person in his private or social existence. Rather it has a supplementary function to perform. When these other units of society cannot or will not do what the good of all demands, government must prod them to the doing. When persuasion fails, and the value to the public welfare requires it, the moral force of law may be exercised to assure compliance.

With this philosophical background, we are in a position to elaborate a moral norm for state intervention. A clear formulation is the following: "It also belongs to the State to protect the rights of the child itself when the parents are found wanting . . . whether

---

and aspects of this problem.

[4] The moral view of earlier form of the problem has been ably presented in Ford, *The Refusal of Blood Transfusions by Jehovah's Witnesses*, 22 LINACRE Q. 3-10, 41-50 (1955).

by default, incapacity or misconduct. . . ."[5] It cannot be objected that in so acting the state substitutes itself for the family. It simply supplies a deficiency existing contrary to the right of the child which parental inability or neglect fails to provide for. The state remains true to its supplementary function.

This intervention, however, should be infrequent, by way of exception rather than the rule. Or another way of expressing this restriction – the courts should not intervene except in flagrant instances of parental neglect. The jurisprudential rule is morally sound which holds that law must not attempt to repress all evil but only graver violations. Nor should it strive for some maximum of public health. Rather it must be content with a respectable mean. We may amend our moral norm to read: the state may intervene when the parents are found *gravely* wanting by default, incapacity or misconduct.

But the frequency and extent of state interposition is relative. It will vary with the greater or lesser need of society at different historical moments. Today we are experiencing a weakening of family life. Divorce, desertion, the failure of love and of the exercise of authority in the home constitute the parental delinquency to which sociology, child psychology and the courts themselves bear witness. In general, then, this trend to extend the exercise of public authority is called for.

Applications

What about this extension specifically into the area of physical health? We apply the norm: when the parents are found gravely wanting. And the gravity of parental neglect of bodily health is to be measured not by the standards of child welfare valid for earlier times. Corrective surgery for a deformed limb was a hazardous business and held out little hope of success before the advent of bone grafting and the other techniques of modern surgery. There was no obligation to undergo it. Today we benefit not only by the great progress of medical science but by the mass marketing of the newest drugs and public health programs. With this social and medical progress, the right of the child to health and happiness and the corresponding duty of the parents to provide the ordinary means thereto keep pace. That the courts have seen fit to enforce this increased responsibility is an exercise of enlightened public responsibility.

Psychological defects can be as detrimental to the person and human happiness as physical ones, and more so. Man esteems the enjoyment of his mental faculties of mind and will more than his bodily ones. For the courts to ignore parental neglect of the psychological health of the child but insist on compliance with his right to physical health would argue inconsistency, unreasonableness in law. Indeed both physical and psychological elements are sometimes found in the same illness, as psychosomatic medicine attests. From the ethical viewpoint, then, the development in law under study represents a laudable and necessary effort to keep pace with the changing circumstances of human living.

There is, however, a greater restriction to court intervention in the matter of psychological health than in that of bodily well being. Psychological medicine is of far more recent origin. The efficacy of many of its therapeutic techniques is disputed among the psychologists themselves. Hence there is less hope of alleviation of mental distress.

[5] Pius XI, *Christian Education of Youth* (1929), FIVE GREAT ENCYCLICALS 49 (1939).

Moreover, the availabilty of its services is more restricted, its expense more dear. Hope of success, availability and expense all enter into the moral evaluation of what are called the ordinary means of preserving health. To such means alone a moral obligation attaches. Anything more is an extraordinary means, beyond any moral imperative. The courts should not ignore this consideration, lest they impose unreasonable burdens.

Thus far we have considered the general ethical values pertinent to the question under discussion. With these values in mind we should answer our final question. Did the courts overstep moral bounds in the three New York cases?[6] Here the moralist is on uncertain ground. He leaves the surer terrain of ethical principle to enter the arena of the particular and the contingent. He can only express an opinion, not pass final judgment.

Conclusion

We can go along with the reasoning in the *Rotkowitz* decision justifying a court order for surgery to correct leg deformity from poliomyelitis. It is in accord with our norm. The one dissenting parent appears gravely negligent. But the court went too far in the *Carstairs* case in ordering a psychiatric examination for the child suffering some emotional instability. All things considered, this was hardly an ordinary means to emotional health. The parent had done no moral wrong. Given the uncertainty of successful psychiatric treatment, she can scarcely be accused of the serious default necessary for court intervention to be justified. In the *Seiferth* case,[7] not only parental objection was respected but that of the twelve-year old minor himself. Ethics would side with the majority view of the court, seeing in the Appellate Division holding an invasion of the person of the subject. The final answers must come from the men of the law with a knowledge of all the pertinent facts, assisted by expert medical and psychological testimony, and in the light of the moral values expressed above.

[6] See notes 1 and 2 *supra.*

[7] See note 1 *supra.*