

## ABOUT NORMALITY

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In the context of the problem of life-prolonging measures for dying or irreversibly comatose patients, the distinction between ordinary and extraordinary measures plays a decisive role. There is a broad consensus about the fact, that we owe all ordinary measures to those human beings at all times and until their death – unlike extraordinary measures. There we have an area of discretion and the necessity of an appreciation of values.

The omission of extreme effort is not the equivalent of "killing by omission". If we neglect to bring a 90 year old, mortally ill patient to a special hospital in the USA, to prolong his life for 2 months, it does not mean to kill him. The medical duty to fight for life always ends with a capitulation. Modern medicine makes it possible, to delay this capitulation continually. But dying is a part of life. And we are not the masters of life and death. The physician has to capitulate early enough to make sure, that he does not make a humane dying impossible. That each omission of a possible prolonging of life is killing, is especially pretended by supporters of euthanasia, like Peter Singer and Ernst Tugendhat. The motive is clear. Provided that each renouncement of a prolonging of life is killing, we are killing permanently anyway, and the active killing is nothing else but what we have already accepted.

Peter Singer means to impress on us, when he is writing, that it would not make any difference after all, whether a mother let her child die of hunger or asphyxiated it with a pillow. Yes, that makes no difference. But it makes a difference, whether she lets her child die of hunger or whether she renounces to give it antibiotics in the case of imminent death, which is definitively coming. That means, that it makes a decisive difference, if she obtains something normal or abnormal / extra-normal.

I have now replaced the term of the "ordinary" by the term of the "normal". Because what is to be challenged here, is the concept of normality. It depends on this concept, how we judge the omission legally and morally.

Objections are raised against the concept of normality from different sides, on the one hand by utilitarians and consequentialists like Peter Singer, on the other hand by Habermas and his followers. Consequentialism states a duty of the human being to optimise the world. The only criterion for the moral judgement of an action is, whether it contributes to the optimisation more than each possible alternative action. In the philosophical tradition God alone was in charge of the *bonum universi*. It was not even allowed to human beings to usurp this prerogative of God. The human being is standing in an *ordo amoris*, which is structured by finite relations of proximity and distance and by professional duties. So according to Saint Thomas it is the task of the magistrate to search for an absconding criminal to punish him. It is the task of the criminal's wife to help him, when he is hiding. Namely the wife has to care for the *bonum familiae* and the magistrate for the *bonum civitatis*. God's will appears *post festum*, in the fact that the man is either captured or not. But neither the wife nor the magistrate are let in these plans. Therefore they do not have the right to hinder the other from the fulfilling of his duty. The magistrate is not allowed to punish the wife for her help and the wife is not allowed to become a terrorist to save her husband.

Normality is the frame in which finite beings move and have to move. However this is rejected by utilitarianism. When two children have been falling into the water and I can only save one, Peter Singer supposes, that we should save the more worthy and not our own child. That means that there is nothing like an *ordo amoris*.

Habermas' objection against the normative meaning of normality is the breakdown of National Socialism. At that time for Habermas and his friend Apel it was a breakdown of what they had experienced as normality in their youth. And their slogan became: "Normality, never again!" Never again an application of norms, that do not owe to a preceding universal discourse, but build the frame for our actions unquestionably. People like me, who grew up in a different milieu, experienced things totally differently. For them the NS regime was a revolutionary break with any humane *ethos* or civilisation and

the year 1945 was the return to normality. So normality is apparently no last and unquestionable fundament of human acting. There can be wrong and right normality. But normality is founding a precedent. This precedent is confutable. However in the case of a conflict the duty to give justification is on the side of the one who believes that he should act against this precedent. (I am just thinking of the Constitution of the Sacred Liturgy of the 2<sup>nd</sup> Vatican Council. It says that no change of the old liturgy is allowed, if it is not justified by a considerable and definitely foreseeable benefit for the church. The old liturgy, the applicable normality, does not have to justify itself. It is the reformer who has to justify each innovation. Needless to say, that the reform of the liturgy carried out later, did not follow this instruction of the council).

Normality is a condition for all life on earth. It does not have its paradigmatic place in the dimension of mind, neither in the dimension of physical, inanimate nature. For the mind there is only unconditioned truth and there are only unconditionally applicable moral norms. And in the physical dimension laws of nature, which can be formulated in mathematical terms, do apply without fail. Where a star drifts from its calculated course, it is not the star which has made a mistake, but we either have to take note of a fact so far unknown or we have to revise our theory. Furthermore laws of nature do not have any normative meaning for human acting.

We have to allow for them, because otherwise acting is not possible at all. However their knowledge only has an instrumental meaning for our acting. They always have the form of "if... then ..." and do not commit us to anything. They only describe and do not answer the question "why". The laws that structure life are of quite a different nature / are quite different. They are not formulated in mathematical terms, they do not apply without fail, but they answer the question "why". They explain to us, for example, why birds fly from the north to the south in winter. It is because they usually find feed there. In contrast, that their voyage sometimes ends up in the nets of Italian bird catchers, is no explanation for the flight. Normality is a teleological, not just a statistical category. Even if most of these birds actually had such a sad end, this end would still be without any worth for an explanation of this end. For the theorist of evolution only the supposition, that this once has been different, is useful. Normality is, as I said, not a purely statistical category. It rather has normative connotations. If 90% of a population suffers from headaches, we will not be trying to adapt the other 10% to this condition, we will do it the opposite way around. Chronic headaches will never become 'normal'. Though the "*hos malista*" of Aristotle, and the "*ut in plurimus*" of Saint Thomas respectively, are deemed to be indications for the accordance between behaviour and essence. And for non-human creatures this actually holds true. That it also applies to human beings is a popular opinion. Hence the corrupting impact of the "*Così fan tutte*". When it appeared, the Kinsey-report had a corrupting effect in the USA and far beyond, because it showed, how the statistically normal sexual behaviour diverged from what US-citizens called good and creditable. This discrepancy between the real behaviour and the officially applicable and accepted moral standards is indeed characteristic for all High Cultures. Christianity is able to explain this discrepancy by means of the theory of original sin. You can also talk about hypocrisy in this context. Then you should add, however, that according to La Rochefoucauld, hypocrisy is the bow of vice to virtue and according to Gomez Davila the disappearance of hypocrisy is the most certain indication for the moral decadence of a civilisation. Though hypocrisy is parasitic. Where it increases, it smothers the moral, of that it is living after all.

For two reasons the normality of behaviour is indispensable for human beings. First because it allows a stability of mutual expectations of behaviours. Without such, acting would not be possible. Relating to the inanimate nature that surrounds us this reliability is founded in the laws of nature. Rules of normality are in accordance with the laws of nature, where life and especially where free creatures are concerned. Secondly: rules of normality allow acting due to the fact that they relieve of reflections. Who would have to reflect about the principles of morality and about utility rootedly before any action, would never get acting. By far most of the norms that lead our acting are long ago determined by moral and custom. The orders of a legitimate authority usually must be followed and their legitimacy must be assumed. So the presumption of legitimacy is on their side. This is also the sense of the *lex artis* in medicine and of the medical professional *ethos*. The physician must not think about the functional and moral demands before each of his measures. *Lex artis* and professional ethics unburden him. But those

precedents are confutable. There are situations, in which important reasons against prevailing normality are so exigent, that we are obligated to deliberate autonomously. You must not obey every military order. And when it became clear to Franz Jttgerstetter, who recently was beatified, that Hitler's war was an unjust war, he refused to become Hitler's soldier and incurred the execution. Everybody, his village, his priest, his bishop, wanted him to comply with normality and not to think, that he alone knew the Christian duty. Normality is indispensable for our acting. Still, it is not the last criterion of what is wrong and what is right. There are cases, in which it abandons us. In the case, that scientific civilisation causes such dramatic changes, that the traditional rules of the professional *ethos* do not function anymore. In the case occurring today, that the capability to prolong human life endlessly with various prosthesis is growing constantly. The traditional rule of the medical professional ethos, to save life as long as possible in any case, can not hold any longer, if the possible becomes boundless. In such cases, we have to rethink and redefine normality.

However here it shows now, that we have to deal with a double normality of human: a natural and a sociocultural one. Both are antagonistic towards each other. It is an essential part of the natural normality of human beings to be concretised in a historical, sociocultural normality. The human being is a speaking creature by nature. However there is no natural language, but the linguistic nature of man must be unfolded in a variety of historical languages. The unity of humankind only appears in the possibility to translate all human languages in other languages mutually, - even though there is always a loss of information. An example for the sociocultural reshape of natural normality is the definition of the so-called "minimum living wage". In the juridical practice in European countries, the TV set is part of this minimum. It is not allowed to seize the television of a defaulting debtor. People like me, who do not own a TV set, show that this is obviously not a natural normality. This becomes even more evident in medicine. The standards of normality change with the medical progress. What has been luxury once, is now belonging to the indispensable repertoire of the physician and the hospital. The question is, whether the cultural relativity of the standards of normality is unlimited, or whether something like the human nature is also continuing in civilisation to build postulates and set boundaries. To answer this question, we have to step towards a third level, in addition to the other two levels of normality, from where something like an absolute norm, a meta-norm can be constituted. This is the level of personality. It is not identical! to human nature. There are also non-human persons. Persons do not form an own species. The word "person" has a normative connotation. It is used to characterise a creature as an end in itself. All actions and omissions concerning a person must be such, that the involved person is never just a mean for the end of other persons, but that it is respected as "someone" to whom we are always accountable for the consequences of the actions that concern him. This metanorm is indifferent against normality and the abnormal. But normality is indispensable for the application of the norm. The person namely just exists as an owner and bearer of a nature. And the respect for a person as an end in itself can only be operationalized, when, dealing with its nature, it is respected it in its integrity. Nature in itself has a teleological and therewith a normative structure. But as persons we surmount the mere natural. Not because it is a nature, but because it is the nature of a person, its final structure constitutes something like categorical duties. On the one hand the duty, to unfold its cultura! dimension, to let it take part in a linguistic and a cultural community. On the other hand however the duty, to make the cultura! normality compatible with the natural one. In the process of civilisation in Europe, since Plato, since Christianity and again in the age of enlightenment, "naturalness" becomes a cultura! ideal. Thus, more and more all the forms of presenting oneself, all forms of fashion, that deform the natural body strongly, disappear in the world, meanwhile undisciplined expressions of physicalness are turned into a taboo.

But let us come to a conclusion. In how far do these thoughts contribute to the consideration of the question, which live-prolonging measures for moribund people are always demanded, which measures require an appreciation of values and which should not be allowed. The metanorm of human dignity demands a primacy of the interest of the patient in the answering of all three questions. Other interests must be strictly subordinated. This especially holds true for the topic of organ transplantation. It is not allowed to dispose of a body in behalf of others, until the patient is unequivocally dead, according to indisputable criteria. And this only applies if the patient has agreed in advance. It is not allowed to do anything which

amounts to killing him. Still it is also not allowed, to let the answer to the question, whether he should be kept alive artificially and when the corresponding measures should be abandoned, depend on the interest in a transplantation and to hinder him dying, because his organs are needed some days later.

The second question is, which life-prolonging measures are always demanded. Here the dualism between natural and cultural normality plays an important role. The possibilities of the *prolonging* of life have dramatically increased by the medical progress. Thus the standards of normality have changed. That does not mean, that all that is possible already belongs to the standard. This is especially prevented by the limitation of means, the limitation of disposable organs, but also and particularly the limitation of financial means, of appliances and money. You have to keep that in perspective. For economical reasons it is impossible to make all actual therapeutic options existing anywhere available to anybody at any time. A selection is demanded and its criteria will not be independent from cultural normality. At the same time human dignity demands to justify these criteria to the concerned persons.

There is still the question: which are these criteria? Firstly, you have to say, that the meta-norm of human dignity demands to respect the wish for life of every human being, if the technical means to fulfil this wish are disposable. Admittedly, you have also to respect, if a human being, whose end is not far off and whose organism cannot perform the required activities for living any longer, does not want to make use of the means for prolonging his life. That does not have to do anything with suicide. In light of the ambivalence of natural normality between the pursuit of self-preservation and the inevitability of death, it is the right of the human being to welcome death and the right of the Christian to wish with the apostle Paul: "to depart, and to be with Christ", [Übers.: King James Bible, Phil, 1.23,24]. Furthermore there are the following thoughts: nature has tied the survival of the human species to free actions, namely eating, drinking and cohabitation. Not breathing on the other hand, which is done involuntarily. Therefore it is a *peccatum contra naturam*, to feed human beings artificially or to force a woman to become pregnant by enforced cohabitation or enforced in vitro fertilisation. The human person *is* not its nature, it *has* its nature and this having of a nature is its being. The tendencies of this nature are given to freedom as a material and they constitute duties in dealing with them. But what about life-prolonging measures, interventions and medications for moribunds, who are enabled to utter their will and whose presumptive will is not accessible by any advance directive? We cannot communicate with them as persons any longer. We just have to deal with their organisms. Only in this organism they are given to us. That means, that the natural normality becomes the only guiding principle for us to deal with them. This natural normality makes the distinction between "ordinary" and "extraordinary" measures possible. The human being in this last stage does still assert a claim: a claim on the alleviation of his suffering, on hygiene and above all on the degree of personal attention and care, from which we can suppose, that it might still feel somehow pleasant for him. But when the organism is not capable of the essential vital functions any longer and the person cannot impose its will on the organism, then it is time, to let that human being go. Total parenteral nutrition, artificial respiration and the administration of antibiotics should not belong to the standards of normality in the professional ethics. Those measures should be reserved for extraordinary cases where the duties *prima-facie* must give way to superior principles, like the principle of the minimisation of suffering. However the avoidance of suffering from starvation and suffocation must be weight up against the suffering because of an agonising prolonging of the dying. The more so as the palliative care helps us here today. It is quite a different matter, when suffering from starvation is caused by an apnoea test, which serves for the diagnosis of death. There is namely another way to achieve this diagnosis, which is to wait for some hours. Hours, that are demanded by deference anyway. And if you do not want to wait, hoping for a transplantable organ, it means that you accept the potential suffering from starvation, in an interest, which is not that of the dying person. But this should not become a part of our cultural normality and the medical professional *ethos*.