

Case Two: A Kantian Approach to the Morality of Blood Substitute Clinical Trials Without Informed Consent

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Clinical trials in a number of countries are now underway to evaluate experimental, non-human blood substitute.¹ One scenario calls for the blood substitute to be available on board emergency vehicles. This allows first responders the opportunity to provide transfusion support at an accident site and on the way to the hospital. However, many of the patients who would most benefit from the use of this material may be unconscious and unable to comprehend or sign an informed consent. One possible solution would be to eliminate the need for informed consent.

INDEX TERMS: autonomy; bioethics; informed consent; Kant; Mill; utilitarianism.

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The ethical question posed by this scenario is penetrating: Is it moral to use an experimental, non-human blood substitute to provide on-site transfusions without the patient's informed consent? At first blush, assuming the blood substitute is effective, commonsense morality might uphold its moral

permissibility both because the patient's life could be saved and because the knowledge gained from such trials may save lives. This view fits a position in normative ethics called *consequentialism*; the view that the only factors relevant to an action's moral worth are its consequences.² As Shelly Kagan puts it, "If an act will have bad results, that is a reason not to perform it; if, on the other hand, it will have good results, then that is a reason *to* perform it."³

However, since a requirement forcing medical personnel to obtain informed consent could have negative consequences with no obvious countervailing benefits, the consequentialist appears committed to the claim that medical personnel have an obligation *not* to require informed consent—that such a requirement would be immoral. That's because consequentialism claims that we are morally *required* to perform the act with the best outcome in a given situation. Since performing the transfusion without the obstacle of obtaining informed consent could produce the best outcome compared to the alternative of seeking informed consent (even in the case where it can plausibly be obtained), we are morally required to do so and any other act is morally forbidden. But this seems too strong. Shouldn't we at least seek informed consent whenever we can? It's also worth noting that consequentialism is consistent with the claim that the transfusion is morally required even if those performing it know beforehand that the patient will die—if the blood substitute is known to be toxic—so long as the death of this patient results in medical knowledge that can save lives in the future.⁴ This places consequentialism outside the realm of commonsense morality. What seemed to be an obvious and unproblematic method for determining one's moral obligations in this case is revealed on analysis to require substantial and controversial moral commitments.

At this point, the reader sympathetic to the moral value of the consequences of performing these transfusions but unwilling to accept consequentialism's more severe implications might want to argue that there is a middle ground. We could construe the moral value of the outcome in this case in conditional terms. We could say, for instance, that *if* informed consent can be obtained, then one has a moral obligation to do so; but *if* informed consent cannot be obtained, then one

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has a moral obligation to promote a procedure that could save lives now and in the future. However, it should be noted that this principle does not follow from consequentialism. Recall that for the consequentialist an action's consequences are its *only* morally relevant factor. Since obtaining informed consent has no influence on whether or not the experimental transfusion is successful, it does not factor *at all* into the consequentialist's moral calculus except negatively in the case where obtaining informed consent would forestall the procedure's benefits. So there is no room within consequentialism for the construction of conditional moral principles like the one above.

Where does the consequentialist go wrong? Kant gives us an incisive analysis.⁵ The problem, according to Kant, is that the consequentialist allows the patient's value to be determined solely by the outcomes she can be used to produce, for instance whether she can be used to promote life saving treatments. Commonsense morality does not value people to be contingent on outcomes. Commonsense morality claims using a person as an instrument for the sole purpose of securing a favorable outcome is *immoral*—particularly without consent. Kant supports commonsense morality and offers an explanation as to why such actions are immoral.

While Kant's full theory is large and complex it seems clear that the consequentialist approach to this case would violate a version of Kant's fundamental moral principle: *the categorical imperative*. The version of the categorical imperative at issue is what Kant calls the *Formula of Humanity* (FoH): "So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means" (AK 4: 429).⁶ Kant does not claim

we should never use people as means, only that we should never treat them *exclusively* as means. To do so would be to regard a self-directed rational being as little more than a tool. Kant thinks we can, and often do, use the capacities of others for the accomplishment of our own ends without treating them merely as instruments; but this only happens when we behave towards others in ways that they can consent to when they are exercising their reason. Such conditions do not obtain in the case of the non-consensual blood transfusions under discussion, and this is a compelling reason to deem the proposal immoral.

ENDNOTES

1. Sakai H, Sou K, Horinouchi H, and others. Haemoglobin-vesicles as artificial oxygen carriers: present situation and future visions. *J Intern Med* 2008;263:4-15. Epub 2007 Nov 27.
2. Utilitarianism is the most famous form of consequentialism. Egoism is another example. Classic defenses of utilitarianism include: Bentham J. *An introduction to the principles of moral legislation*, Garden City, NJ: Doubleday, 1961; and Mill JS. *Utilitarianism*. Crisp R, editor. New York: Oxford University Press; 1998.
3. Kagan S. 1998. *Normative ethics*. Boulder CO: Westview Press; 1998:26.
4. Foot P. The problem of abortion and the doctrine of double effect. *Oxford Review* 1967;5:28-41.
5. Kant's moral theory can be found in: Kant I. *Groundwork of the metaphysics of morals*. Cambridge: Cambridge University Press; 1997.
6. The standard format for citing passages from Kant's works is to refer to the volume number and page number of the German Academy (AK) edition of his works where the passage may be found. For instance, (AK 4: 227) refers to volume 4, page 227 in the German Academy edition.