

SOCIAL ATOMISM AND APPEALS TO RIGHTS

ELIZABETH H. WOLGAST

Estados Unidos

I wish to discuss a consequence of a certain commonly accepted view regarding the nature of society. It is the view that a society is a simple collection of separate individuals, each having its own interests, motivation, and autonomy. Just as a gas is a collection of unconnected molecules on their separate paths, so a society is a collection of individuals following their separate interests. This view I call social atomism.

On this model, one needs to account for the fact that a society exists at all. Why shouldn't people simply go their individual ways? Hobbes, Rousseau, and Locke gave similar answers: men believe that it is in their individual interests to join together; otherwise they would not. While a man *might* live without society—as an island, so to speak—he believes that it is to his advantage to make a contract with others. With respect to it, he is an equal party, demanding his rights in full equality with the rights of others, promising and demanding the promises of others to obey the government which together they create. Society is thus a human creation. It is made to serve the purposes of human individuals, and justified insofar as it serves them.

Language like this is familiar to Americans through the Declaration of Independence, the Federal Constitution, and the constitutions of many States. More recently it appears in documents of the United Nations. We come to society with inalienable rights, these say, rights to life, liberty, and the pursuit of individual happiness. Any government that is created can therefore be limited by these prior rights. Moreover, citizens stand to their government as equals, none privileged by rank or status to special treatment. And so on.

According to social atomism, people are conceived as basically similar, just as molecules are. This helps to guarantee that any contract they enter into will yield equality of status and basic rights. And along with this assumption goes the assumption that it is just for people to compete—within some guidelines of fairness—for whatever they individually desire.

Although atomism is associated with the familiar values of individual freedom, free competition and the right to pursue happiness, and although it has served well to undermine the authority of one person over others without the latter's consent, it also carries serious drawbacks. Among these is its inability to represent important connections among people, connections of concern, responsibility, need, dependency, and trust. Problems which relate to these fall outside the model's scope, beyond its capacity to represent them. As a consequence, we lack the conceptual tools needed to deal with them, and tend to address such problems in an absurd or illogical way. In this paper I will present three examples of such issues, issues that are currently addressed in an atomistic framework and commonly by appeals to individual rights. Addressing them in this way, I will argue, puts both the problems and their solutions in an eerie, irrational light. Behind my discussion of these examples, of course, lies the deeper question why we should be so committed to atomism in the first place.

The first problem I discuss is that of the mistreatment of patients by medical personnel. The popular current way of approaching these wrongs is to institute a set of patients' rights, which include the right to fair and respectful treatment by hospital staff and a right to full and honest communication about one's condition and its treatment. It also includes the right to decide for oneself whether to embark on a recommended course of treatment, having been given a full explanation of its nature and risks. A statement of these rights is frequently hung on the walls of hospitals where a patient can be apprised of them and the staff be reminded.

The question I raise is whether the institution of such a set of individual rights is a reasonable way to address the problem of patient mistreatment or neglect? I will argue that it is not.

Even at a superficial glance, the institution of rights to be exercised by someone who is unwell—in pain or possibly feverish or under medication or disabled—vis a vis those persons to whom he trusts his care, seems very curious. A patient puts himself in the care of his doctor and other medically trained people because he needs the help they are trained and expected to give. He is not in the position of someone shopping for a product which he may or may not need, but almost surely doesn't need so urgently, a product with regard to which he can exercise calm and deliberate choice. Were he *not* sick, one might say, he would then be in a position to exercise such rights as are set out, could exert himself in his own behalf, call the healthcare professionals and the hospital to task for any carelessness or lack of

respect. But such actions are not easy to reconcile with his role as patient (the very term implying passivity); it seems anomalous for him to possess rights which he can press against just those persons who are responsible for his care, press from a condition characterized by sickness, anxiety, and dependency. When he recovers, provided that he does, and is strong and rational, then, perhaps, the rights would be of use to him. But by then the time of his need for the indicated rights is presumably past. Thus, precisely the circumstances which make him a patient—and from which his need for rights derives—work against his exercise of the rights given him as a patient. And even though he is free to seek another doctor or hospital, he will not in that way escape the paradox of his situation.

Mistreatment or disrespect of a patient is surely wrong. Moreover, its wrongness is colored and enhanced by the nature of the relationship concerned, by the fact that the wrongdoers are in positions of trust while the patient is more or less helpless and dependent. The patient's situation is therefore a factor in the description of the wrong and makes it the more censurable. It is worse than the wrongs done, for example, by a dishonest horse trader or card shark, or even that done by a mugger or thief. For in these latter no trust, normally, need be placed. While in the case of doctors, a burden of trust is presumed at the outset. Even though it be heavy, it is an aspect of the role that a medical professional undertakes as his when he goes into this field. Nor is it an accidental feature, but an ancient and essential feature of doctoring.

Therefore, it is a mistake to assimilate the redress of injury done to patients to the model of injury done to consumers by the manufacturers of defective or dangerous goods, or that done when a tradesman cheats them, or that done as a result of a scam, involving deceitful ways of acquiring money. Yet this is the case often pleaded. The patient pays for medical services, and has, as the right underlying his rights as a patient, a right to receive fair value for his money. Therefore he may sue the doctor to recover damages for the injury done. But while the suits themselves are not under criticism, they should not be modeled on consumers suing for recovery of their losses. The injury done a patient, even in the respect withheld from him, is more personal than that normally possible for a tradesman or manufacturer to do the unwary consumer. The injury to self, to one's physical condition, has no parallel in the normal case of consumer fraud, though a case may involve such injury as well. Moreover there is, as I have implied, a particular obligation on the part of the medical staff to act in behalf of the patient, never as his adversary or as someone who may be

seeking his own benefit at the patient's expense. There is no room for caveat emptor, or buyer beware, in the relation between doctor and patient. Or if there is, then this relation is different from what has been supposed since the time of Hippocrates.

One may object that there is room for the consumer model in certain kinds of optional medical treatment. There the patient may shop around, as people do for eyeglasses, and seek certification of competence or bargain prices, depending on his priorities. I answer that this is certainly so. Caveat emptor is applicable for some kinds of medical treatment, plastic surgery among them. But it is not applicable in the normal and most common kinds of cases, as we have seen.

The institution of patients' rights has behind it a suspicion of unnecessary arbitrary authority to be vested in a doctor or anyone else. It is easy to see that distrust of authority in government can carry over into distrust for people in other responsible positions. But in the case of certain relationships, what is needed is not legal protection of rights for the dependent party but assurance of a responsible, professional attitude on the part of the party who serves. In a parallel way, what is needed to combat child abuse is not the institution of children's rights against their parents. Here again, the rights would need to be exercised against the very people who might be supposed to have the greatest interest in a child's welfare, i. e., its parents. What is needed, on the contrary, is assistance to the family, support and help for the parents who are for some or other reason led to betray the responsibilities of their parental roles.

If, therefore, the appeal to patients' rights is based on a suspicious attitude toward paternalism in medicine—that is, the taking of responsibility for decisions concerning the patient which he properly should take for himself—then one must remark that this is a case of bending over backward. One cannot take all responsibility away from the doctor and still leave him his proper and important role as physician. Nor can one assume that the patient has no more interest for him than a consumer of services has to the supplier of them.

I think it might be granted that there is presently, in American society at least, some confusion about the relation in which doctors and their patients stand. Are doctors just individuals pursuing their own interests through the practice of a profession which is first of all a science, and only incidentally has to do with human beings? But even putting it this way shows that such a description must be wrong: any discipline or profession that has to do with human beings has ethical considerations built into it, and the more important the disci-

pline is in the lives of those humans it effects, the heavier the moral weight it must bear. Therefore, the view of doctors as entrepreneurs who are pursuing their private goals as they practice medicine, although it is made plausible by an atomistic model, is not consistent with the profession as it has anciently described itself. It cannot approximate the consumer model, i. e., one in which a feverish and ailing person shops for medical care like a man selecting a tie. Which diagnosis, he might then ask himself, best fits with my plans to go abroad next spring? And shall I treat this patient, the doctor would ask himself, when he may die and pay me less than that one, who will live to remunerate me well?

The correct description of the wrong done to patients when they are mistreated would not be that their rights are violated. It would rather be that the physician involved acted unethically and unprofessionally. And this ought to be a serious concern, both to patients and to the medical community. Both ought to take serious steps to see that such misbehavior is controlled (perhaps by sentences given in criminal actions) and the stigma not passed along to innocent members of the profession. But so long as the offenses are described as violations of rights along the lines of consumer fraud, the most that can be expected is increasing wariness on the side of both doctors and patients, a diminution of trust, and a loss of the relationship which allows doctoring to be a valuable social institution.

The second example I want to consider is really a collection of problems, comprehending a number of different but related issues. For want of a better term I will refer to them as problems regarding the position of women and women's rights. And I will preface my discussion by saying that I would not deny that many problems for women can be dealt with by providing equal rights, or rights which pertain to women in exactly the way they pertain to men. It has been through a long struggle that women have been provided many such rights, and nothing I shall say should bring them into question. What I have in mind to discuss are rather rights which are needed by women in particular, not needed by men, and so difficult to support by an abstract doctrine of equality.

For instance, a problem faced by many women is that, having raised a family and cared for a home and all the detail that implies, they are in middle age quite dependent as regards their future. This usually means dependent upon a husband, just that individual whose children and home were maintained. If, at this stage of their lives, they are widowed or divorced, how is their situation to be understood? They cannot compete very successfully in a job market,

having been for a long time unprepared and unpractised. Their chief function, you might say, has been fulfilled, and their position in the labor force is necessarily secondary.

Atomistically speaking, these individuals can be seen as having interests and capacities of their own, as well as needs to be satisfied. They should need only the opportunity to earn their way. But such a view is very unrealistic. To speak of their "equal opportunity" to compete and thus to satisfy their desires makes a mockery of that idea. They compete with experienced and younger people. They may be expected to have a shorter future on the job. Why should an employer choose them over a younger or better trained person? Nothing says he should. And since he too is conceived atomistically, it would not make sense for him to give preference to older women out of sentiment or moral conviction.

The older woman who has spent much of her life raising a family and then must compete in the labor market is an anomaly for the atomistic model. How should she be counted? Even atomistic thinkers must recognize that families do not manage themselves, or children thrive when neglected or unattended. Someone needs to maintain a home for them or some reasonable substitute. But how are such people conceived? In an atomistic framework, where relationships are unrepresented, this work might be conceived as labor to be paid for. Yet this gives a strange idea of a family —i. e., the idea that the wife and mother is an employee of the husband. There is also the implication that, looked at as a career, family care is a fairly bad and poor-paying prospect, which a woman of talent should sensibly avoid.

The problem of the middle aged or elderly widow or divorcee is not a new problem, and does not derive from atomistic thinking. It is a real and perennial problem, known in all societies. In each, the problem has been addressed in some way or other: in some, she will be the responsibility of her eldest brother; in others, she will be the concern of her eldest child or children; in some, the household property is put in her name so that she shall never be thus dependent. What is distinctive of our society is not the problem, but the barriers in the way of dealing with it. For example, in a Florida case, a widower sued the state because a widow could receive a tax exemption that was not available to a widower. Unfair, he argued, that women should have privileges not provided for men. Atomism was on his side: what holds for one should hold for all, it dictates.

Other features of women's lives distinguish their needs from those of men, among them the connection of motherhood with the need for maternity leaves, the connection between child-rearing and the

need to limit work commitments, leading to the need for part time rather than full time jobs. Then there are distinctive problems related to illegitimate children and retirement benefits for women which are not characteristic of the lives of men. All these problems need to be described in terms of the relations between women and their husbands and their children; it is impossible to describe them atomistically.

Another area where atomism leads to conceptual oddities is in regard to children's problems. To deal with the problem of child abuse by instituting children's rights addresses the issue only if one sees children in an atomistic way, i.e., as not essentially connected with or dependent upon their parents. But, as in the case of patients' rights, to provide them with rights against those who are supposed to have their concerns closest to heart has the air of paradox. No wonder it happens that children would rather not report the abuses they suffer; where else will they find the loving concern which is supposed to be exemplified in the care of a parent for its child? Court protection and foster homes are a cold form of justice in its place.

I have argued that some social issues cannot be addressed if they are described in terms of the violation of individual rights, or if they are, will lead to remedies that are inappropriate. Not all injuries to individuals, you might put it, are injuries of an individualistic kind; some derive from interrelations, responsibilities and roles. Yet we cannot use such latter descriptions without leaving the model that represents a human community—and a human family—on the model of separate and autonomous molecules.

If my argument is correct, then the use of atomistic thinking will make some problems difficult or impossible to deal with conceptually. Whatever measures are taken regarding them will lack a reasoned justification. Patchwork and stopgap policies are likely to prevail. From this it follows that it would be reasonable to put atomism aside, or at least qualify our commitment to it, applying it with caution and care. Let us look at these two alternatives.

We want atomistic reasoning when we defend the one-man one-vote principle of democratic government; we use it to argue for freedom of self-expression and lifestyle, the rights of minorities who are outvoted, the right to worship in any way one wants. Why can't we say that in some respects a society can be seen atomistically while in others it cannot? A qualified atomism seems to be exactly what is needed.

But there is a difficulty in this option which I do not think can be resolved. It is this, that a certain view of human nature seems to go hand in hand with atomism, i. e., the view that humans are separate

in their basic motives, egocentric in the origins of their actions. It is as if we see a human individual as having his own internal spring for his behavior, one which naturally has no involvement with the springs of another. This image stands behind the right to pursue one's own happiness without interference from others, and the right to follow one's conscience. Non-interference from others is the condition upon which this kind of motivation can work; therefore freedom from a connection with others is part of the ideal of individual freedom.

The problem with holding a qualified atomism, then, is that it would mean a rejection of this view of human nature; yet precisely this view of human nature makes atomism plausible. To reject even some of the consequences of atomism will mean rejection of this view; one cannot both accept it and then deny the consequences it leads to. The qualification or modification of atomism therefore requires an alternative theory of society and a different psychology as well.

Although writers like Milton Friedman and Robert Nozick celebrate the importance of individual self-determination, free competition among individuals, non-interference on the side of the community, and the power of self-interest as a productive force; and while some trade union leaders issue as a moral command that one vote one's self-interest; nevertheless everyone knows that normally parents take care of their children, and children their elderly parents, while we help elderly people and give them our seats and give contributions for the poor and sick. In short, we don't behave atomistically. Such facts about our actual behavior affect the good workings of society and prevent atomism from leading to its ultimate and egoistic end. Many other facts go crosswise to atomism: that nurses and doctors and teachers and social workers have a motivation for their professions which atomism cannot account for, that we can have a concern for unborn generations and people we have never seen, that we strive for a society that is simply just and act from pity and kindness without a string of reasons generated from our personal sensations or desires. People help one another spontaneously, answer questions when asked, give directions and so on. Otherwise democracy would deteriorate into Plato's or de Tocqueville's caricatures. Milton Friedman notwithstanding, one can say, other motivation than self-interest are assumed to be at work all the time, and one can hardly imagine an ongoing society without them. We may subscribe to atomism when we do political philosophy, but in practice we deny it, depending upon a multitude of connections—strong and tenuous—among people and their continual willingness to take care of one another.

SOCIAL ATOMISM AND APPEALS TO RIGHTS

197

Yet I do not propose to end on such a sanguine note. I believe that the influence of atomism upon our thinking does affect our moral ideas and our lives, and does so in predictable and pernicious ways. The cowboy ethic, the “me-generation”, the culture of narcissism, these are all manifestations of the ethical and social atomism which began nobly in the idea of a social contract which denied that rulers were born to rule and the rest born to obey. The theory behind it, that social atomism I have been discussing, has another and less noble side. It is the philosophical ground of a widespread and frank espousal of hedonism together with the rejection of responsible relationships and concern for others. In such a moral environment, I think, with Christopher Lasch, that a humane society cannot long endure.