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Nudges, paternalism, the patient and ethics in medicine

Nudges, paternalismo, el paciente y la ética en medicina

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Abstract

Medical advice and recommendations should always consider the patient as a person, considering their dignity in particular. Analyzing the decision-making process is important to understand that the patient must make the decision freely, and the doctor must strive to consider their reasons, feelings, and context to create a therapeutic alliance, with respect and compassion, avoiding the dominant and authoritarian paternalism of the past. Thaler and Sunstein's proposal of "libertarian paternalism" to change the environment and facilitate good decisions without coercion may be appropriate, provided that the doctor-patient relationship is capable of achieving that human bond of friendship, so

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that the patient trusts and accepts what the doctor proposes when they have been informed and educated about what is best for their health, promoting a more humanized, ethical medicine committed to the overall well-being of the human being.

Keywords: decisions, doctor-patient relationships, ethics, medicine, therapeutic alliance.

1. Decisions and the patient as a person

In everyday life, we rarely stop thinking about how we make decisions. When we find ourselves in complicated situations of uncertainty, we are unaware that our brain is performing a complex analysis of the factors for and against the alternatives available to us. In many of these cases, even when it is not ideal, we choose what we think is best based on factors that are in different balances: reason, the goals we seek, our feelings and emotions, without realizing that the latter, which are more immediate and impulsive, depend more on the environment and the moment and are often more intense and decisive, including when it comes to decisions regarding the doctor's instructions.

The analysis of how we make decisions is of great importance, which is why it has interested and inspired reflection among many thinkers since ancient times. In classical Greece, Epictetus spoke of *Prohairesis*, translated as "free will," "will," "choice," or "intention." This notion was also fundamental to Aristotle, who brought into play the connection between deliberative processes, on the one hand, and the acts of decision or choice resulting from them, on the other (1). For Thomas Aquinas, a scholar of human beings, intelligence, will, and freedom play a key role: they are the most specific faculties of the person and, as such, tend to better modulate their life, their actions, and their end: to know the truth and love the good (2). His analysis of human action is profound and provides keys to

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understanding it. Some statements from his complex work help to understand the process, such as, for example:

> ...every choice concern everything that in some way seems better.... if two goods are proposed that are equal according to a certain consideration, nothing prevents one of them from being considered to have a condition by virtue of which it stands out, and the will inclines toward it rather than toward the other (3).

What makes clear is that it is not a specific real condition of a *thing* (which is considered good) that leads us to choose whether always choose what is good for us if our intellect presents it as such, even if objectively it is not. It is, in short, the specific consideration that we ourselves make of that condition (4). The experience we all have in our decision-making shows the accuracy of this statement.

Often, the alternatives that come into play in the decision are not absolutely right or wrong for the person; they imply both objective and subjective qualities, so we decide based on our motivations, which are those that are *for me and now*. That is why they vary according to the circumstances of what we perceive as desirable and "good," even with the fear of sometimes making a mistake that could have negative consequences.

Decisions that have to do with life and health are, especially in complex and serious cases, the most difficult to make. As doctors, we have always tried to help our patients in this decision-making process, recommending what we believe is necessary to restore their health. The Hippocratic school, an example of this noble endeavor, exhorted doctors on how to treat patients:

> Do all this calmly and orderly, hiding most things from the patient during your work. Give him the appropriate orders with kindness and gentleness and distract his attention; sometimes rebuke him strictly and severely, but at other times encourage him with solicitude and skill, without showing him anything of what is going to happen to him or of his current condition; for

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> many people go to other doctors because of the aforementioned statement about the prognosis for their present and future (On decency. De habitu decenti, Perì eusksheмosynes. Hippocratic treatises) (5).

In recent decades, after twenty-five centuries of Hippocratic tradition, we doctors have learned to become more aware of the dignity and autonomy of patients, to stop pretending to do *everything for the patient, even without the patient* (6). This change has brought about varying medical attitudes, which understand respect for the patient, on the one hand, as the strict fulfillment of the duty to inform them of what they must do so that they can make a decision based on their freedom; or, on the other hand, as exerting pressure on them to adhere to what we think is right, in a way that sometimes seems to border on coercion.

In the doctor's task —as sublime as it is overwhelming— of treating illness, consideration of the patient as a person, including their dignity, can unfortunately sometimes be neglected. The tautological notion of human dignity, treated since ancient times by classical Greek thinkers such as Plato and Aristotle as an allegorical idea, and later as a concept by other philosophers such as Boethius, Thomas Aquinas, Pico della Mirandola, and Kant, all agree in relating human dignity to will and freedom. García Morente (7) expressed it very clearly: "We call a person a subject who governs the series of his own transformations with his thoughts and free will."

Therefore, when we are faced with a patient, we must always consider first and foremost their person: the unique, rational human being with their own desires, aspirations, goals, beliefs, hopes, and concerns, who lives, perceives, and experiences their illness in a unique and exclusive way. They have the freedom to direct and guide their own transformations and decide what they consider appropriate, for which we must have absolute respect.

It is striking that neither the ethical-medical texts of antiquity (oaths, prayers, lists of commandments or advice), nor medieval writings, nor the treatises on medical ethics of the Modern Age

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make specific reference to respect for the patient's decisions. Therefore, in the opinion of Gonzalo Herranz (8), this respect represents, in medical ethics, a late acquisition, an attitude characteristic of our time, but precisely for this reason mature and definitive.

2. Nudges

Using both philosophical and scientific notions about decision-making, across the entire spectrum of possibilities, an interesting trend emerged a little over fifteen years ago on how to influence choice, known as *nudge*, which means "to push gently, especially with the elbow, to attract someone's attention" (9). This concept was used by Cass Sunstein and Richard Thaler, Nobel Prize winners in economics, to title their book*: Nudge*. In its Spanish version: *Un pequeño empujón: el impulso que necesitas para tomar mejores decisiones sobre salud, dinero y felicidad* (10), the authors use the term to show how to stimulate, incentivize, or guide decision-making. They argue that people can be architects of others' decisions and have a responsibility to organize and accommodate the context in which they are made, so that people get the right result even when they are not aware of it. Assuming that human decisions are influenced by particular biases, concerns, and situations that limit rationality, they present guidelines for better understanding the nature of behavior and decision-making strategy in order to positively influence individuals.

The book has had a major impact worldwide, and this trend has been adopted in economic, political, social, and even health care systems, due to the scope of behavioral techniques to influence decisions. It is therefore worthwhile to learn about their theory and reflect on it in relation to the ethics of medical practice.

They take as their thesis, from psychologists Daniel Khaneman and Amos Tversky, the intuition that people are not rational in the classical sense, especially in conditions of uncertainty, which is reminiscent, with some nuances, of what classical thinkers expressed. Humans use cognitively efficient heuristics (shortcuts, rules, strate-

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gies that guide and facilitate resolution) to solve complex problems, but these can have biases or systematic errors that often violate principles of rationality. Such as the principle of *dominance,* which holds that a person should choose the option that is never worse than the others and can offer a better outcome; the principle of *invariance*, under which the same information must be understood and valued in the same way, regardless of how it is presented; and the principle of *sunk value,* which holds that, since choices influence the future, decision-makers must weigh future consequences rather than past results or behaviors. Applied to the field of health, as Blumenthal and Krieger point out in their review of the subject, it is not difficult to see how these multiple biases and heuristics develop in the medical context in both patients and professionals (11).

Therefore, Thaler and Sunstein propose exercising what they call "libertarian paternalism" as a middle ground between interventionism and laissez-faire, seeking to modify the architecture of decisions so that, with small nudges, decision-making becomes more convenient (12). They argue that the golden rule of libertarian paternalism is to offer nudges that are most likely to help and least likely to harm. Thus, these nudges do not restrict choices; they are not about prohibiting or imposing but rather redesigning the way choices are presented to facilitate better decisions. They use knowledge about human psychology to influence behavior, with the understanding that the outcome is more beneficial for everyone involved, improving information so that individuals can make better decisions. However, the use of these techniques for any purpose other than the exclusive good of the patient, for example, inducing a surgical procedure that is not essential, serving only the interests of the physician, falls into the realm of dishonesty.

3. Paternalism

In relation to the ideas expressed above, it is worth analyzing the term "paternalism," *which* has Anglo-Saxon origins and has great

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resonance in the medical field. *It* was apparently first used in 1840, particularly in the workplace and in the political relationship between metropolises and their colonies (13). The Oxford English Dictionary defines "paternalism" in its first meaning as "the principle and practice of paternal administration; government as a father; the claim or attempt to supply the needs or regulate the life of a nation or community as a father does for his children" (14). And in a second, more general sense: "the principle of acting as a parent does in relation to their children" (14). The *Dictionary of the Royal Spanish Academy* defines it as: a tendency to apply forms of authority and protection typical of the father in the traditional family to other types of social relationships, such as politics, work, etc. It adds that it is mostly used in a pejorative sense (15). The analogy between paternal power and other forms of power is an ancient idea. It could well be said that paternalism is a new term, but an old concept (16). The paternalistic analogy has been used to justify political power, comparing it to the nature of the power that a father exercises over his children. It considers paternal power to be a domination in accordance with the nature of things, because the father is naturally the one who should rule the household, due to his greater age, and his rule is just because the father naturally rules in the interests of his children, out of the love he feels for them. This analogy has a persuasive force that is also used to try to legitimize other exercises of power less connected with what is "in accordance with nature" (13). Hence, the word evokes something that can be interpreted as pejorative and negative.

Carlos Viesca, in his excellent research on medical paternalism, states that doctors have cultivated a tendency to be overprotective of their patients and to make decisions about their health and well-being, a "deciding for others" that raises questions (17). He recalls Galen describing his actions as "dictatorial paternalism" because he believed that it is the doctor and not the patient who should determine what should be done. He also cites several definitions of paternalism, ranging from what is considered "an attitude or behavior of gentle domination and selfless protection" (18) to "the intentional limitation of one person's autonomy by another, when the

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person limiting autonomy justifies their action as being carried out for the purpose of helping the person whose autonomy is being limited" (19).

Based on the illustration, with generic presumption and the search for individual freedom, limitations are established on interventions that seek or may invade that freedom. Since then, especially in recent decades, thinking that privileges autonomy, such as bioethical principlism in particular, paternalism has been viewed with suspicion and criticized (20). It is certainly reprehensible when it comes from a position of superiority, of power, of someone who makes decisions for and on behalf of others and gives orders without providing any information, so that they cannot be discussed or questioned. This is a form of paternalism in the field of medicine that we could classify as harmful and toxic, generating justified discomfort in the recipient and in society, even if its intention is supposedly to help.

There is no doubt that the interaction between doctor and patient is complex and asymmetrical, framed by the health problem of one person and the ability of another to remedy it (21). The patient has come to the doctor because they have an ailment and trusts the medical care they can provide to solve it. Whether these are serious, life-threatening situations or less serious ones, such as having to follow instructions that limit or affect the patient in some way, all of them can cause discomfort, entail risks, dangers, or complications and therefore generate fear or reluctance. In some cases, the patient literally has to put their life in the hands of the doctor. It is therefore unacceptable to take advantage of this situation of vulnerability by adopting an authoritarian and arrogant attitude.

Antonio Pardo warns that the special care that must be given to patients because their lives are dependent on others involves providing the means for a therapeutic friendship to develop, in which the patient communicates their problems while the doctor takes charge of their human peculiarities (22).

This could be described as good, ethically acceptable paternalism, or brotherly friendship that advises and guides the patient to make the decisions that are best for them within the therapeutic

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alliance, something that could be in line with the well-targeted nudges proposed by Sunstein and Thaler. It is a relationship that genuinely cares about the person and understands them as such, using its knowledge exclusively for the benefit of its patients.

4. Medicine and the doctor-patient relationship

It is therefore encouraging that the current attitude highlighted by Herranz (8), which is more mature and definitive, based on mutual affection, respect, and trust, recognizes the shortcomings of inappropriate medical behavior. The outdated dictatorial paternalism of yesteryear, the libertarian paternalism of misunderstood nudges —when these seek more strategies to structure the patient's decisions in a decisive manner— or the "indifferent liberalism" which, in seeking unrestricted observance of autonomy, disregards the patient's objective well-being with a lack of interest in the person. It is not a question of imposing, commanding, or making decisions for the patient, but of advising in order to persuade and convince.

The therapeutic alliance between doctor and patient, in which both collaborate to achieve the common goal of health, is based on a wonderful bond of trust that is established from the beginning of this unique and almost mystical professional relationship.

This has been the foundation of all medical practice, but now with a renewed focus on the person: a humanitarian and humanizing relationship in which the doctor provides help and care, but also companionship, comfort, and compassion, a unique connection in which there is also extraordinary and profound respect for the person. It also includes a noble familiarity and intimacy that gives the doctor the privilege of being a confidant, with the enormous responsibility of having access to the patient's body in order to try to restore their well-being, which is the formal object of medicine and the good it seeks, understood as an entitative perfection that naturally belongs to man, but which for some reason he sometimes lacks

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(23). Actions and attitudes that are oriented toward caring for the patient's life, seeking ways to restore and protect the somatic, social, psychological, and spiritual balance that we understand as health, and when this is not possible, helping to alleviate the suffering caused by the illness, or accompanying and caring for the patient in the final stage of their life, understanding and accepting the limitations that both have as persons.

In every consultation and treatment, the physician must consider the multidimensionality of the person, understanding them in their individuality and diversity. A corporeal universe that has a name and surname. For this reason, a doctor may choose to treat a specific disorder in one person in a certain way and decide not to do so —or to do so in a different way— in another, becoming a "specialist" for that particular patient, understanding them as a unique and original subject, to whom they will explain and propose the intervention designed specifically for them. The patient does not have the knowledge to know what is wrong with them, so they need to be given the necessary explanations to understand and make the right decision in the complexity of the situation. They are people who must be informed, but also educated about health, always respecting their freedom and expanding it with explanations that allow them to make appropriate decisions.

It is therefore essential that you listen to them and answer their questions and concerns in a friendly atmosphere, so that they can discuss everything that will help restore their health and thus achieve adherence in a natural environment, discussing the approaches from their personal perspective, both the benefits and the risks, and, where possible, providing them with a range of possible alternatives, all aimed at achieving the objective.

Decisions regarding health are shared between the doctor and the patient. The doctor has the responsibility to know what should be done. That is why it is also important to consider trust.

Contrary to what most people think, trust is not earned, it is given. Patients trust their doctors because they believe that they are

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capable and will act in the best interests of their lives and health. Doctors must therefore respond to this trust and honor it with their attitude, being honest about both the benefits and risks of what they recommend, including their own doubts. They cannot guarantee what is beyond their control, but they can and must commit to doing everything in their power to give the patient the best chance of success. This is the reality expressed by the well-known phrase in medicine: "trust given to a conscience." Trust is essential for establishing a solid and effective therapeutic relationship. Empathy is essential for building trusting relationships, but it is not enough. When patients perceive not only their doctor's good intentions, but also that their doctor understands their suffering, in an interaction that is more intense than empathy and called compassion —an attitude that is often misunderstood but necessary and wonderful because it involves the desire and intention to alleviate suffering— this facilitates the doctor's work. In other words, this is what informed consent aims to achieve. It is not a document, but rather a delicate process of building a partnership and making shared decisions with the active participation of the patient, in a friendly environment that culminates in health or at least the alleviation of suffering (24).

There are exceptional occasions when the patient feels so overwhelmed by their situation and so confident in the ability, judgment, and experience of their physician that they leave the decision to them.

Escribonio Largo, physician to the Roman emperor Claudius, completed the classic definition of the physician as vir bonus medendi peritus (a good man skilled in healing) with the qualifiers plenus de misericordia et humanitatis (full of mercy and humanity) (22). This is how a physician should be. There is no doubt that medicine involves knowledge and technique, but it is also an art that requires time and skill. Prudence is one of the most necessary attributes that, together with competence and professionalism, must guide their path. To the best of their ability, virtuous doctors must ensure that patients feel at peace and are treated in a friendly, kind, and patient manner, with

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healthy optimism and the joy that is evident in them when they fulfill their mission. In other words, the love they have for their profession and their patients.

The Charter of Identity and Principles of the Latin American Medical Profession, presented to Pope Francis in 2016, perfectly summarizes these concepts:

> The philosophical roots of medical professionalism include the Hippocratic tradition of medicine as a social and moral institution, coinciding with the principles of Christian humanism, together with the humanistic and civic heritage of the Universal Declaration of Human Rights, establishing an alliance that represents an unconditional commitment to professional competence, altruism, and the trust of society. Today, we understand our medical professionalism as a value of unconditional service to patients and to society itself. This means not only the requirement of technically competent healthcare practice, but also, and preferably, the assumption of values and commitments of personal exemplarity such as integrity, intellectual honesty, compassion, humanization, and warmth in treatment, all as an expression of a vocation for service (25).

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