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Just Wars and doctors' strikes

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Adam Roberts' paper in this issue tackles the ethics of doctors' strikes in the light of the conflict in the UK between the Department of Health and junior doctors.¹ Whilst there has already been a decent amount written on doctors' strikes and the most recent junior doctors' one, this paper provides a nice example of the way in which reflection on the theoretical arguments outside of the directly medical context can usefully be applied in specific contexts with good effect.

In his brief paper Roberts sets out to develop a general ethical framework for understanding doctors' strikes and then applies it to the specific context of the recent NHS junior doctors' strike. The paper concludes that the action taken by junior doctors was ethical.

The general (and entirely reasonable) strategy of Roberts' paper is to produce and argue for an independent set of standards—in this case a set of criteria to be satisfied—by which we can judge the ethical acceptability of particular behaviours. It is a 'top-down' approach that aims to capture the full range of issues in an ethical framework and then to use these to determine the ethical acceptability of strike actions in specific contexts. This route has the advantage, when successful, of providing a clear justification for or against the resulting ethical assessment of the strike. Challenges from within this approach will come from those who see failings in the either the setup of the ethical framework or in its application in the particular context.

The paper begins by distinguishing two questions that, according to Roberts, are often conflated: 'How should doctors behave as doctors?' and 'Should doctors strike?'. "It is not analytically true that those principles which dictate how doctors should conduct themselves in their work also determine when and how they may suspend that work in protest" Roberts (*see page 698*). This distinction is strategically important since much of the debate about the acceptability of doctors' strikes surrounds the claims about how doctors ought to behave with respect to

their patients—a strike looks to be ignoring the duties of a doctor. If these two questions should be distinguished, obligations to patients are contained within the practice of medicine and do not extend to the justification of strike actions.

In answering the second of these questions, Roberts evokes a suggestion made by Selemogo² that when and how doctors should strike is analogous to the conditions of a just war. This is a conceptually interesting move with more than a little political significance. We are given six conditions which are to be satisfied if a doctors' strike is to be justified: (i) it is a just cause, (ii) the risk of harm to patients is proportionate, (iii) the action has a reasonable chances of success, (iv) it is the option of last resort, (v) it is organised by a legitimately representative body and (vi) it is formally and publicly declared. Interestingly, Roberts takes issue with Selemogo's idea that disputes over a doctors pay do not constitute a just cause, dismissing idealistic claims about the social responsibilities of doctors. This adapted 'just war' framework is taken to capture the relevant considerations and provide us with the criteria for ethical justification. In applying the framework to the junior doctors' context, Roberts finds that the conditions are satisfied and the strike is ethical.

In what follows here I want to make two comments—the first about possible lines of response to Roberts' argument and the second a cautionary note about reasoning in practice.

(1) Professionalism inside and out of the profession.

Roberts is right to separate the two questions as he does. The ethical issues that arise and the standards that apply to doctors as they practice medicine do seem distinct from questions about whether doctors are ethical permitted to strike. So, as Roberts points out, both thinking about the overall patient outcomes and protecting the doctor/patient relationship are key principles internal to the practice of medicine that have been linked to arguments against doctors' strikes. The worry in the first instance is that by striking, doctors will harm patients or damage the doctor/patient relationship and so act unethically by the standards of the profession. Roberts plausibly responds that both harm

to patients and the doctor/patient relationship can be avoided if the strike action is organised in appropriate ways. He also maintains that this was true of the NHS junior doctors' strike.

In the face of these failed arguments, Roberts notices a lack of arguments about the nature of the medical profession of the kind that could be used to undermine the acceptability of strike action by doctors. These arguments would mostly likely show that there is something about what doctors do that makes medicine distinctive as a profession. A response to Roberts would show that the nature of the profession is such that it has implications for how doctors behave outside of the specific practice of medicine.

Discussions of professionalism in medicine include a range of examples that might be of use as parallels here. Are there any special responsibilities that doctors have concerning the way they use social media? Do doctors have a special responsibility to lead a healthy lifestyle or to pay attention to environmental sustainability? Even if we answer 'No' to both of these questions, we can see how the obligations that doctors have inside the practice of medicine can encroach on their lives in the social world.

More concretely, how are we to understand the obligations of doctors to put themselves at personal risk or extra inconvenience for the sake of patients—in an infectious disease outbreak or an incident in a public place? In these cases, if we think that there is something that separates the doctor's responsibility from the non-doctor's duty to help, we have begun to establish a way in which medicine is special—where the obligations that doctors have in the practice of medicine spill over into their conduct outside of that practice.

I do not take these considerations to tell against the rights of doctors to strike but we might think that there is something special about the role of the profession of medicine, in terms of social responsibility. We might also make similar connections for teachers and other public sector or public service professions. The professionalism route provides us with strategies for argumentation that might flesh-out the distinction between the standards to which we hold doctors in the

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practice of medicine and the standards to which they are held outside of it. Roberts is right to seek the arguments for this account of professionalism in medicine.

(2) The politics of strikes

The model of a union and a strike is firmly centred around workers and workers' rights against employees. Unionisation and the corresponding threat of a strike is an obvious way for the workers to protect themselves or at least to balance the power between themselves and the employer. In the usual context, a strike by the workers is designed to threaten the employers' profits. Third parties, the consumers, are inconvenienced but not necessarily at risk.

But when the employer is the state and the workers are a profession that is in the service of the society, the relationship is more complex. On the face of it this is because the state as the 'agent' of society is the employer and members of the society, as service users, are potentially at risk. But more importantly in these cases, the force of the strike action operates through denying the service users. This difference—the difference in who is dir-

ectly affected by the strike—makes a strike by public sector workers more fraught and more controversial than strike action by workers who are largely outside of the public sector.

The difficulty in this case is that the service users—patients—are pawns in the politics of industrial action between the employer and the employees. The political battleground is harm to patients and the well-being of doctors. Successfully convincing the public that patients will be harmed for seemingly petty issues will mean that the strike is taken to be unreasonable and unethical. On the other hand, successfully convincing the public that doctors are overworked and underpaid will legitimate the strike. That the depiction of these harms and benefits is political should make us wary of how each side frames the empirical case.

As noted above, the prospect of collective action does help to correct a natural power imbalance. If all collective strike action was unethical, the employer could withhold pay for the apparent derogation of duty of individual doctors who complain about their conditions and trade on the profession's

commitment to the care of patients. The politics of the strike shows this.

But if the power were to shift in the other direction, where the collective action of the medical profession stymied attempts to control spending or rationalise the healthcare system, the ability of the system to deliver effective care in an efficient and fair manner could be compromised.

The nature of the medical professionalism and its social role is key in the politics of these issues. Being a member of the medical profession clearly brings with it both rights and responsibilities. The usefulness of the just war adaptation is clear, particularly as providing a framework for considering the acceptability of strike actions. But I suspect that more of the arguments that Roberts calls for about the nature and societal role of the medical profession would help to further calibrate the framework to the context.

REFERENCES

- 1 Roberts AJ. A framework for assessing the ethics of doctors' strikes. *J Med Ethics* 2016;42:698–700.
- 2 Selemogo M. Criteria for a just strike action by medical doctors. *Indian J Med Ethics* 2014;11:35–8.