

德國現行檢傷分類 的規範倫理論證—— 以「即時成功預後」為中心*

A Normative Ethical Justification of Current Triage in
Germany: Focus on the Immediate Success Prognosis

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摘要

新冠肺炎自2020年造成全球流行後，迄今仍尚未完全平息，明顯地改變了人類既有生活模式與社會制度；醫療體系首當其衝，可見於第一波全球疫情下的歐洲各國。大量病患求治於醫療院所，非既有之醫療資源得以支應，因而引發檢傷分類之必要，進而造成犧牲部分病患以救治其他病患之爭議。訴諸「拯救越多人越好」所反映之效益論觀點，或許立基於人皆平等之

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主張，實際上卻可能無法避免現實所產生之制度性不公平，更遑論其衝突於現行德國法制肯定人性尊嚴及生命價值無差異性，因而不應衡量生命之輕重，於此有明顯之義務論色彩。目前採取之「即時成功預後」乍看之下仍基於效益論觀點而為，不無爭議；然本文嘗試指出德國現行之檢傷分類並非完全依循效益論，毋寧係以正義理論為前提，調和義務論與效益論於檢傷分類作為醫療資源分配制度。醫療資源匱乏而為檢傷分類下所生之犧牲與救治，在所難免，若檢傷分類並未以個人生命作為他者救治之手段，便難謂侵害其主體地位而違反人性尊嚴。

Since 2020, COVID-19 has caused the global pandemic, having not subsided completely, and changed clearly the established patterns of human life and social systems; the health care system was the first to be affected, as seen in the first wave of the global pandemic in the European countries. The large number of patients seeking treatments in medical institutions which were supported by existing medical resource led to the need for the triage which in turn led to the controversy of sacrificing some patients to save others. The utilitarian viewpoint reflected in the appeal “the more people are saved, the better” might be based on the idea that all people are equal, but in reality it may not be to avoid the institutional inequality, not to mention its conflict with the current German legal system with the deontological characteristic, which affirms human dignity and the non-differentiation of the value of human life, and therefore should not measure the importance of life. At first glance, the current “immediate success prognosis” seems to be based on the utilitarian viewpoint, which is controversial. However, this paper tries to point out that the current German triage is not entirely based on

the utilitarianism, but rather on the premise of the theory of justice, which reconciles the deontological ethics and the utilitarian concerning the triage as an allocation system of medical resource. It is inevitable that the scarification and treatment under the triage due to the lack of medical resource. If the triage doesn't take the life of an individual as a means of medical treatment for others, it could hardly be said that it infringes on the status of individual subjectivity and violets human dignity as the consequence.

壹、前言

2020年初，由於新冠肺炎（COVID-19）的高傳播力與快速重症化甚至是高死亡率的特性，在歐洲形成嚴重疫情，不只公共衛生措施反應不及導致確診個案急速攀升，更因大量確診病患求助醫院而導致醫療資源匱乏甚至產生排擠之困境。醫療體系不足以支應突如其來的大量病患，導致許多人無法及時獲得相應的醫療救治，因而死亡。為了使醫療資源得以最大化利用，或以倖存機會為檢傷分類的標準：在同樣因新冠肺炎而陷入重症的眾多病患之中，僅有最大存活機會的病患，才得以被給予醫療資源。但此舉無疑讓醫院陷入兩難，一方面牴觸了日內瓦宣言的平等誠命，另一方面卻又受困於有限的資源，若不進行分配，恐無法拯救更多的病患，於是引發歐盟各國在醫療倫理上的論戰¹。

1 Vgl. Adriano Mannino, *Wen rette ich – und wenn ja, wie viele?* Stuttgart: Reclam, 2021, S. 20; Weyma Lübbe, Ein Kommentar zu den anlässlich der Corona-Krise publizierten Triage-Empfehlungen der italienischen SIAARTI-Mediziner, *VerfBlog*, 2020/3/15, <https://verfassungsblog.de/corona-triage/>, doi:10.17176/20200316-002835-0 (last visited Jul. 7, 2022).