

The Affair of JUDr. Mitlöhner: Case Analysis and Broader Context

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1. Basic facts

In the first issue of last year's *Journal of Medical Law and Bioethics* JUDr. Miroslav Mitlöhner, CSc, then director of Institute of Social Work of University Hradec Králové, published a paper entitled "On the legal and ethical problems associated with the birth of a gravely malformed individual",¹ in which he defends introducing the practice of enforced abortions and infanticide of "gravely malformed individuals" without parents' consent, by a doctor's ruling. The paper was presented as output of the project Development and support of multidisciplinary research team for the study of contemporary family at UHK (RODINA-UHK-CZ.1.07/2.3.00/20.0209).²

On the website *Medical Law and Bioethics* there subsequently developed a brief discussion,³ in which the very low scholarly standard of the paper and moral repulsiveness of the theses defended by the author was pointed out. The editor-in-chief Tomáš Doležal defended the editorial board's decision to publish the paper saying that although he is not sure about its scholarly standard, the editorial board eventually decided to publish it, since "it is a contribution which could evoke a sharp reaction and perhaps even a polemic at already a more expert level", and "the most proper defence is discussion and argumentative defence, or rational analysis proving that theses endorsed by authors can be refuted."⁴

It then turned out that Mitlöhner's paper is a case of self-plagiarism, since the paper (with minor differences) had already been published in the journal *Czechoslovak Medical Care* (1986).⁵ When the editorial board had learned of this, it published the following statement:

"Since the editorial board of JML&B has received an incentive concerning the originality of JUDr. Mitlöhner's paper "On the legal and ethical problems associated with the birth of a gravely malformed individual", it was forced to deal with it.

One of the conditions of the possibility to publish a paper is the fact that it has not been published before and has not been at the same time sent to another journal for reviewing (or an explanation has been provided in Commentaries for the editor). This rule is part of the Instructions for authors and is a necessary presupposition of the publication of a paper. In the case of JUDr. Mitlöhner's paper this condition was not met, since the paper had already been published in Čs. Zdrav., 34, 1986, no. 3, pp. 108–113 and the author had not informed the editorial board of this fact.

1 © Miroslav MITLÖHNER, K právním a etickým problémům spojeným s narozením těžce malformovaného jedince, *Časopis zdravotnického práva a bioetiky* 1/2014, at: <http://www.ilaw.cap.cz/medlawjournal/index.php/medlawjournal/article/view/64>, retrieved on June 13th, 2014 (further as "self-plagiarism").

2 Cf. *ibid.*

3 Cf. discussion under the entry: © Tomáš DOLEŽAL, Oznámení o vydání nového čísla časopisu, *Zdravotnické právo a bioetika* (on-line), at: <http://zdravotnickepravo.info/oznameni-o-vydani-noveho-cisla-casopisu/>, retrieved on June 13th, 2014.

4 *Ibid.*

5 Cf. Miroslav MITLÖHNER, K právním a etickým problémům spojeným s narozením těžce malformovaného jedince, *Československé zdravotnictví* 3/1986, pp. 108–113 (further as "original paper").

The editorial board has found the author's acting to be ethically quite unacceptable, harmful to the good reputation of the journal and its publisher.

For this reason the editorial board decided to prohibit the publication of further papers by JUDr. Mitlöhner on the pages of JMLandB, since breaking the basic rules and ethical principles of academic work must not be tolerated.”⁶

The affair quickly gained media publicity, Mitlöhner was sharply criticized from many sides⁷ and resigned on his position of director of the Institute of Social Work and the position of member of academic board of the Ministry of Work and Social Affairs; however, e.g. dr. Radim Uzel stood up in defence of him⁸ and the “media campaign” against Mitlöhner was also condemned by Tomáš Doležal and David Černý from the editorial board of *Journal of Medical Law and Bioethics* as “witch-hunting”, which according to them makes impossible the desirable discussion of the substance of the problem – though the authors “resolutely disagree” with Mitlöhner’s views.⁹

The following text is an attempt at a complex analysis of the various aspects of the affair, which should result in taking a rational stance.¹⁰

2. Case analysis

2.1 Self-plagiarism

This is the only level of the affair to which the journal’s editorial board originally reacted (the subsequent statements of editors Černý and Doležal concern not so much Mitlöhner’s paper itself, but rather the uproar it had brought about). They reacted from the position of the immediately injured party: it was they who had been deceived, which is why they took the appropriate measure – prohibition of further publication in the journal for the culprit. At first glance it would therefore seem that at this level the matter is solved. This is however not quite the case,

6 The statement is no longer available at the journal website, I made a copy on June 18th, 2014.

7 Cf. a selective overview of reactions: © Roman BALÁŽ, Vraždit novorozenata s těžkým postižením? Tak to jste přestřelil, doktore Mitlöhner!, *Sociální revue* (on-line), at: <http://socialnirevue.cz/item/vrazdit-novorozenata-s-tezkym-postizenim-tak-to-jste-prestrelil-doktore-mitlohner>, retrieved on December 31st, 2014; © Libor NOVOSÁD, Kdo je vlastně ta monstrózní malformovaná zrůda?, *Sociální práce/Sociální práce* (on-line), at: <http://www.socialniprace.cz/zpravy.php?oblast=1&clanek=216>, retrieved on December 31st, 2014; © Zdeňka DOHNALOVÁ et al., Pedagogové ze škol v ASVSP odsoudili obsah článku o souvislostech narození člověka s postižením, *Sociální práce/Sociální práce* (on-line), at: <http://www.socialniprace.cz/zpravy.php?oblast=1&clanek=217>, retrieved on December 31st, 2014; © Radka JANEBOVÁ, Článek Miroslava Mitlöhnera nebyl výzvou k diskuzi a neměl by být obhajován, *Sociální práce/Sociální práce* (on-line), at: <http://www.socialniprace.cz/zpravy.php?oblast=1&clanek=226>, retrieved on December 31st, 2014; © Václav KRÁSA, Information no.: 45-2014 (paper on children with developmental disorders), web of the National Board of Persons with Disability CR (on-line), at: <http://www.nrzp.cz/aktualne/informace-predsedy-nrzp-cr/1209-informace-c45-2014-clanek-o-detech-s-vyvojovymi-vadami.html>, retrieved on December 31st, 2014. For the complete list of references see © Jiří STODOLA, Vědecká etika: případ Mitlöhner, *Inflow* (on-line), at: <http://www.inflow.cz/vedecka-etika-pripad-mitlohner>, retrieved on December 31st, 2014.

8 Cf. © Radim UZEL, Zrůda není sprosté slovo, ale tragédie, *Neviditelný pes* (on-line), at: http://neviditelnypep.lidovky.cz/zdravotnictvi-zruda-neni-sproste-slovo-ale-tragedie-pcv-/p_veda.aspx?c=A140623_194847_p_veda_wag, retrieved on June 24th, 2014.

9 Cf. © David ČERNÝ – Tomáš DOLEŽAL, Smíme zabít těžce postižené novorozence?, *Reflex*, June 23th, 2014 (on-line), at: <http://www.reflex.cz/clanek/komentare/57269/smime-zabijet-tezce-postizene-novorozence.html>, retrieved on December 31st, 2014.

10 I will strictly hold to the text of Mitlöhner’s paper (in its two versions) and leave aside Mitlöhner’s subsequent statements in interviews for the servers *iDNEP.cz* and *lidovky.cz*, in which he attempts to reinterpret, deny or “explain away” some of his theses, the fact of self-plagiarism, and others. (Cf. © Petr ZÁLESKÝ, Termín zrůda pro těžce postižené děti byla jen citace, brání se vědec, *iDNEP.cz*, June 20th, 2014 [on-line], at: http://hradec.idnep.cz/rozhovor-s-vedcem-miroslavem-mitlohnerem-fij-/hradec-zpravy.aspx?c=A140620_2075379_hradec-zpravy_kvi#utm_source=sph.idnes&utm_medium=richtext&utm_content=clanek-box, retrieved on December 31st, 2014; © Hana MAZANCOVÁ, “Za svým textem si stojím, říká učitel, který chtěl zabít postižené děti”, *lidovky.cz*, June 23rd, 2014 [on-line], at: http://www.lidovky.cz/za-svym-textem-si-stojim-rika-ucitel-ktery-chtel-zabijet-postizene-1fv-/zpravy-domov.aspx?c=A140622_123759_in_domov_hm, retrieved on December 31st, 2014). For my critical reaction to one of these attempts see © Lukáš NOVÁK, Mitlöhner a Uzel lžou, *Neviditelný pes*, 27. 6. 2014 (on-line), at: http://neviditelnypep.lidovky.cz/polemika-mitlohner-a-uzel-lzou-dzx-/p_veda.aspx?c=A140625_231409_p_veda_wag, retrieved on December 31st, 2014.

since the victim role the editorial board assumes is not quite in place. The *Journal of Medical Law and Bioethics* wants to be an academic paper, the published papers should therefore be subject to an adequate review process, which should guarantee their scholarly qualities. How could the reviewers not have noticed that the paper does not take into account the contemporary debate, that the only quoted sources are obscure thirty years old texts the number of which can be enumerated with the fingers of one hand? This is the editorial board's failure for which it has not assumed responsibility yet.

The editorial board's attitude further gives the impression of some sort of schizophrenia: the statement quoted above very soon disappeared from the journal's website, then re-appeared, only to disappear for good, so that at present the board's official stance is not reliably searchable. This gives the impression that the board does not in fact endorse it so much (disregarding the fact that stability and permanent searchability of electronic content is the basic mark of the seriousness of a given medium). This impression is strengthened by the fact that representatives of the board Doležal and Černý in their critical statements on the media repercussions of the affair more or less pass over the fact that the paper is a self-plagiarism and try to defend its publication as a relevant contribution to academic discussion – which according to them was thwarted by the hysteric reaction of the public. Although the self-plagiarism level of the affair ultimately appears to be the least important one (at least as I will argue below), it is nonetheless certainly not an aspect that should be marginalized in the academic sphere – all the less, the more its agents try to sweep it away and distract attention from it. Without the permanent uncompromising attitude of the academic community to offences against the ethics of academic work there will necessarily come what we witness at the level of public affairs management: general apathy to deception and eventually resignation to the fact that similar swindles are normal part of academic life.

2.2 Fraudulent use of public funds

As already mentioned, the author declares his text to be an output of an EU project financed as part of the operation programme Education for Competitiveness 2007–2013. The attempt to present a 30 years old paper as an output of the project is therefore not a “mere” breach of the ethical code of academic work, but also abuse of public funds. I believe that the minimum adequate consequence of such action ought to be dismissing dr. Mitlöhner from the research team (if he does not assume responsibility and resign himself). The information available on the internet seem to suggest, however, that this has not occurred – despite the press information¹¹ that the rector had accepted Mitlöhner's resignation and ordered immediate check of the project. Half a year later Mitlöhner is still listed as member of the team as “junior researcher” (sic!).¹²

2.3 Scholarly expertise of the paper

Besides the fact that the paper is a self-plagiarism, it is also necessary to state its unacceptably low scholarly expertise. It is not just a matter of the abovementioned absence of reflection of the academic discussion of the topic, but of the absence of elementary reasoning and scientific methodology in general: rather than of scholarly paper the text reminds of ideological agit-prop. Let us document the low expertise of the paper at least in a few particular points.

11 Cf. e.g. *iDNEP.cz*: © Vědec mluví o postižených jako o zruďách, pobouřil handicapované, *iDNEP.cz*, 19. 6. 2014, (on-line), at: http://zpravy.idnes.cz/clanek-miroslava-mitlohnera-pobouril-radu-postizenych-pi6-/domaci.aspx?c=A140619_132234_domaci_pvc#utm_source=sph.idnes&utm_medium=richtext&utm_content=top6, retrieved December 31st, 2014.

12 Cf. © Team members, in: *rodina UHK* (on-line), at: <http://rodina.uhk.cz/cs/clenove-tymu>, retrieved December 31st, 2014.

In the first sentence the author writes that “the point of this paper is not solving the philosophical, ethical and legal problems associated with the birth of a gravely malformed individual, but an attempt to show this undoubtedly serious problem in broader context”. But in the paper the author does the very opposite: there is no reflection of broader context at all, while the author practically without reasoning presents his solutions of associated problems, whether philosophical (we learn in several sentences what the humanity of a human being consists in or how we are to understand her social and biophysical character – pp. 49–50), ethical (the author has e.g. an a priori position ready concerning the humaneness of artificial termination of pregnancy – p. 50), or legal (the author proposes a change in legislation – p. 53); and the whole paper is in fact a campaign for what the author calls “a necessary shift in ethical, philosophical, moral and legal thought” – p. 50. Is the author not aware of what he is writing? Or ought the first sentence to justify the catastrophically insufficient *manner* in which the author attempts to solve those philosophical, ethical and legal problems?

The arrogance with which the author without any argument simply *states* what the reader is to think is stunning:

“Contemporary approaches to the possibility of terminating the life of a gravely malformed individual immediately after birth are needlessly cautious and the only rational objection to a painless termination of the life of a being which is an evident monster in the sense of long existing opinions could be the difficulty of determining where monstrosity begins...”¹³

“The sociability of a (human) being must be understood not only as the quality and quantity of social relationships among individual humans, but as the ability of the human to realize herself socially, i.e., to be able immediately or in the future knowingly or consciously make use of the actual state of her biological existence...”¹⁴

“It is insufficient to claim that a gravely malformed individual should be viewed as a seriously ill person, to whom all available and possible medical care needed for conservation of life should be provided in all circumstances...”¹⁵

“There is no point prolonging the life of a new-born who has come to the world as a monster and is pre-determined even before birth to death...”¹⁶

The author does not introduce any arguments for any of these theses.

But that is not the end of it: Mitlöhner interspaces his dogmatically presented philosophical, ethical and legal opinions with unbelievable tales, which he passes for historical facts (without quoting any sources): in the Middle ages allegedly “monsters were considered to be supernatural beings or devil’s children and often ended their life together with the mother at stake” (p. 50, no comment is hopefully needed¹⁷); “the Roman Catholic ritual does not allow the baptism of a monster and in case of doubt concerning the humanity of a being admits only conditional baptism” (p. 51)¹⁸, and others.

¹³ Self-plagiarism, p. 51.

¹⁴ Ibid., p. 50.

¹⁵ Ibid.

¹⁶ Ibid., p. 51.

¹⁷ Let us point out at least one item of scholarly literature offering sober and set-in-context attitude to the issue of perceiving “monsters” in the Middle Ages: Andrew N. SHARPE, Foucault’s Monsters, the Abnormal Individual and the Challenge of English Law, *Journal of Historical Sociology*, September 2007, vol. 20, no. 3, pp. 384–403.

¹⁸ In older versions of the *Ritual* there is the formulation “Monstra et ostenta semper baptizentur saltem sub conditione...” (t. 2, c. 1, n. 22), so

This list of fundamental methodological insufficiencies could be continued; the question is, however, whether a text of such kind deserves such detailed attention. As evident, it can in no way be considered scientific, a contribution to expert discussion. It would therefore not be adequate to react to it as to a relevant academic text (and thus legitimize it as part of scholarly discussion); an adequate reaction is precisely only to point out that it is not a text worthy of factual discussion.¹⁹

2.4 The content-ethical aspect of the text

What I consider the worst about the text is its content-ethical aspect, or, bluntly speaking, the moral abhorrence of the opinions Mitlöhner propounds. Three aspects of Mitlöhner's thought construction appear especially unacceptable:

- 1) By calling for the infanticide of "monsters"²⁰ Mitlöhner negates the natural dignity of a human person and her natural right to life, which is also positively grounded in many valid legislative norms.²¹
- 2) By calling for carrying out these procedures without respect to the will of parents he further denies the natural right of parents to care for their children, also grounded in our legal system.
- 3) By reducing the human person to her biological and social aspect (whereby he considers the latter to be more essential and interprets it on ultimately collectivist grounds, see below) he opens the door to questioning the right to life of other groups of people whose biological and social life is damaged in some way – since in the logic of Mitlöhner's conception a biological or social handicap automatically means a limitation of the *humanity* of the individual.

That such opinions are endorsed by someone like JUDr. Mitlöhner – a lawyer who studied in the 1950s, later normalization judge and head of department of general legislation of the Ministry of Justice of the Czech [Socialist]²² Republic in 1975–1985, holder of the medal "For service to peace" and at present member of the aggressive Society for Family Planning and Sexual Education – is indeed not surprising. In this context it is worthwhile to identify those few changes Mitlöhner made in his text to conceal its age and original context. References to obsolete legal norms were updated (or left out), "most socialist countries" became "most European countries", the author removed Marxist ideological phraseology ("bourgeois legal doctrine" → "legal doctrine in 19th century"), he no longer appeals to "socialist humanism"²³

that in fact the *Ritual* on the contrary *commands* baptism to be carried out in *every* case at *least* conditionally, if humanity is doubted (the same formulation is also in the old CIC [1917], can. 748). New (after Vatican II) documents do not mention "monsters" at all, from which it can be deduced that they do not admit doubt about humanity at all, even in case of grave malformation.

19 On this see ch. 3 in detail.

20 The media course of the affair rather infelicitously focused on Mitlöhner's use of the term "monster" for seriously handicapped human beings. Although this terminology certainly shows something of Mitlöhner's attitude to these beings, in the context of incomparably more essential aspects of the affair it is a marginal matter, merely diverting attention from the core of the issue.

21 Especially *Universal declaration of human rights*, art. 3; *Charter of fundamental rights and freedoms*, art. 6; *Convention for the protection of human rights and fundamental freedoms*, art. 2; *Charter of fundamental rights EU*, art. 1–3.

22 Mitlöhner leaves this word out in his biography: Cf. © Detail osoby JUDr. Miroslav Mitlöhner, CSc. (on-line), at: <https://www.uhk.cz/cs-CZ/UHK/Header/rozsirene-vyhledavani?lidId=uhk-mitlomi1>, retrieved June 13th, 2014.

23 The sentence "The problem of gravely malformed individuals is not simple and socialist humanism does not allow turning a blind eye to the vegetation of these individuals and tragedies of their closest surroundings" (original paper, p. 110) was changed to "Although the problem of gravely malformed individuals is not simple, it does not allow turning a blind eye to the vegetation of these individuals and tragedies of their closest surroundings" (self-plagiarism, p. 50). This adjustment is a good example of how Mitlöhner's attempt to conceal his real ideological points of departure makes the already weak argument construction of the paper even worse. Saying that "socialist humanism does

etc. The most noteworthy intervention is the deletion of one whole sentence, which in the original paper was a separate paragraph (which underscores its crucial role):

*"The main value is not the fact of our existence, but our life's contribution to society."*²⁴

This sentence is noteworthy in that it is in fact a concise expression of that "socialist humanism" as Mitlöhner's fundamental philosophical point of departure – his notion of the nature and grounding of the dignity of a human person, from which all his particular theses logically follow. Of course: if the value of a human being consists in her *contribution to society*, then an individual whose existence is not considered beneficial by the society – on whatever grounds, whether she is born or not born – simply has no value. And what has no value ought to be discarded – whereby the legal power to take this decision of course does not pertain primarily to the parents with their possible "emotional and ethical scruples", which need to be "overcome",²⁵ but to the society represented by the all-powerful semi-god in a white coat, who is elevated above such trifles because he represents the higher interests of the State (Party, Nation...) and will therefore kill your child without scruples if he judges that it is incapable of sufficiently "human" life, i.e., life beneficial to society. The Nazi had the fitting term "*lebensunwertes Leben*" for individuals the society has thus written off and consequently applied the theory with typical thoroughness, which Mitlöhner has yet to achieve. He does not yet propose killing the incurably ill, handicapped, aged and other persons uncomfortable for the society, he limits himself, at least for the time being, to "monsters". But the logic of his conception is quite evident; and of course it is nothing but the collectivist ideology proper to the communist regime which Mitlöhner had served so long, which in its basic principles does not fundamentally differ from Nazi ideology, and which our author evidently still professes though he is now ashamed or afraid to explicitly espouse its basic principle. But by crossing out one sentence, which he probably decided the contemporary expert community would not find acceptable, he cannot conceal the internal logic of his ideological manifesto.

As already said, there is nothing surprising about the fact that a posthumous child of the communist regime voices such views and in itself it is not alarming – it is natural that there are a certain percentage of obdurate communists in the society, as there are a certain percentage of obdurate Nazis. I find much more disturbing the fact that many members of the scholarly community accept these views as a legitimate contribution to discussion. That in contrast to the social and intellectual isolation, to which advocates of Nazism, racism and similar monstrous ideologies are spontaneously and deservingly condemned, the *communist* ideologist Mitlöhner enjoys long-term favour of the scholarly community, holds high positions in academic institutions, is member of various scholarly societies, receives grants for his projects, etc. *This* is the greatest failure of the whole affair – not a failure of the individual Mitlöhner, but a failure of the whole scholarly community. As I had expected, when Mitlöhner's affair flamed up this community (or at least its part) tried to cleanse itself by exemplarily ostracizing Mitlöhner. But what has been said above shows that although an energetic solution to this case is certainly necessary at least as a first sign, in itself it definitely does not suffice to heal the morally stale climate, and if Mitlöhner will only serve as a scapegoat, by sacrificing whom the scholarly establishment will again confirm its delusion that otherwise all is fine, then all the worse. And the statements of Doležal and Černý about "witch-hunting" and their calls for scholarly discussion of Mitlöhner's views seem to suggest that this danger is in fact imminent.

not allow..." is some sort of explanation, a hint of applying general principles to a particular case. In the adjusted wording "the problem... does not allow..." it is no more than a thought-empty cliché, a formula without a hint of justification.

24 Original paper, p. 110.

25 Cf. self-plagiarism, p. 53.

3. On the legitimacy of moral ostracism

The conviction that JUDr. Mitlöhner's paper should not have been published also for *content-ethical reasons* was also expressed by some participants in the above mentioned discussion on the website *Medical law and bioethics* (e.g. Mgr. Zuzana Candigliota).²⁶ To this editor-in-chief doc. Tomáš Doležal reacted with reasoning admitting the low expertise of the text but rejecting the idea that the ethical unacceptability of Mitlöhner's views should in itself be a reason for not publishing the paper. Doležal writes:

*"Concerning the contents, I cannot agree that in recent theoretical bioethical reflections there have not appeared scholarly papers or monographs believing that infanticide is not immoral (e.g. in the influential bioethicist Peter Singer, further in Peter Tooley or Alberto Giubilini and Francesca Minerva). This is especially the case with groups of philosophers who admit moral status to persons based on their cognitive functions (a being capable of the I-perspective), not based on their ontological conception as individual of a certain kind. Seeing that such controversial topics appear, we do not believe that it would be appropriate to ban or restrict such contributions on academic ground, albeit the editorial board of our journal need not identify with their conclusions. We believe that the most suitable defence is discussion and argumentative defence, or rational analysis proving that the theses endorsed by the authors can be refuted. We assume an intelligent reader who will form their own opinion based on such reasoning."*²⁷

Crucial here is apparently the claim that, since such controversial topics appear, it is not appropriate to ban or restrict them on academic ground. As evident from what I have written above, I do not agree with doc. Doležal's view; it is therefore appropriate for me to defend my disagreement. That is what I will attempt to do in this part of my paper.

From Doležal's text it is not quite clear whether he endorses his position for pragmatic or principal reasons: in other words, whether he believes that to exclude any opinion formulated in a cultured manner²⁸ from academic discussion based only on its ethical unacceptability is *principally wrong*, or whether he merely believes that academic discussion is a *pragmatically more effective* means of invalidating such opinions than their a priori exclusion from discussion would be. Below I will focus on both alternatives in turn. Besides that we should further distinguish two aspects of "admitting an opinion to discussion" – first, the consent for such opinion to be voiced in the academic milieu at all (i.e., to e.g. allow the publication of a paper expressing and defending such opinion in a scholarly journal), and second, the actual opening of a discussion in which the paper will be reacted to.

The conviction that it is principally wrong to exclude an opinion from academic discussion is based on the presupposition that it is possible and desirable to cultivate the "academic sphere" as an absolutely open, value and opinion neutral platform of opinion clash. I believe, however, that such idea is a delusion. The academic sphere – like any social or cultural institution – cannot be value neutral. For wherever there exists any however organized human activity, there *eo ipso* exists a finality, ordering to an end, whether this is reflected on or not, and therefore there are at least implicitly accepted values. The very conviction that it is desirable that the academic sphere be value neutral is a value judgment (and therefore is a pragmatically inconsistent requirement). The question then in fact is not whether academic discourse ought to assume some commonly respected values or not – without *some* value grounding it could

²⁶ See note 3.

²⁷ See note 3; further see Doležal's and Černý's article in *Respekt* cited in note 9. Other debaters have taken a similar position, e.g. Tomáš NOVOTNÝ: "The paper is not written in a quality way from the point of view of reasoning, citing, or merely defining the topic and sorting ideas [...] The topic is quite legitimate, just the text is of very low quality."

²⁸ We now do not take into account that Mitlöhner's view was not worded in a scholarly cultured way.

not exist at all –; the real question is *what the values ought to be*. It would be foolish to believe that the modern academic sphere even approaches value neutrality – in fact it is dominated by a number of strictly enforced ethical taboos (of which I consider some to be quite appropriate, other dubious). Try e.g. to question the immorality of the Holocaust on academic ground, defend repression against homosexuals etc. – the result will most probably be the end of your academic career.

From the fact that the conception of “value neutralism” is intrinsically contradictory and impossible to realize in practice it does not yet follow that rejected views ought to be altogether *excluded from discussion*; much less that Mitlöhner’s view in particular should be excluded. It only shows that it is impossible to legitimately argue against “exclusion from discussion” *principally*, from “value-neutralist” positions. The search for an answer to the question whether it is acceptable, or even desirable, to exclude some views from academic discourse, must take place at the level of particular value reasoning: the discussion will concern *which values are binding for academic discourse and what it implies*.

Since academic discussion is a *human* activity, it may not as such be exempted from universally human criteria of morality. Whatever we therefore see as the specific goals and values of academic “traffic”, they cannot contradict universal human values – quite the reverse, they ought to be in close relation to them as their particular realization or application.

Perhaps we could accept as fairly non-controversial the presupposition that the first of the specific goals and values of academic discourse is true and justified knowledge; and it is true that such knowledge can best be reached in an environment guaranteeing free discussion and “research”. Thence the requirement of an ideally absolute freedom of opinion and reasoning seems to be easily deducible, and thus the prohibition of a priori “discrimination” of whatever opinions, even if they attacked the very values that constitute and enable academic discourse. But such reasoning would forget that the specifically *academic* values are subordinate to universally *human* values (since academic discourse apparently is not the highest human good – a successful and valuable human life can be lived entirely without it). Therefore whenever consequent adherence to the former would endanger the latter, it would be entirely legitimate, or even an *obligation* to sacrifice free academic discourse, in order that humanity need not be sacrificed.

I believe that this fact will be evident to everyone on clear examples: let us imagine that a moralist worked out a highly persuasive, academically correct reasoning for the superiority of the Germanic race and moral justification of the Holocaust, or for the moral admissibility of torturing children for pleasure. Should we insist that such opinion has the right to be academically defended, that it is a legitimate discussion position? Or would the humanly and ethically adequate attitude be that such an opinion so to say *is unacceptable in good society* and will therefore quite legitimately be excluded from academic discussion? At least the legislations of European states unambiguously endorse the latter, as they understand that although freedom of academic investigation is an important value, the equal and unquestionable dignity of all human persons is nonetheless a much more basic and important value, and therefore has priority in case of clash. And I dare say that Mitlöhner’s attack at the elementary human dignity of seriously disabled children, at the right of parents to defend the good of their children etc. is a case quite comparable to the ones mentioned above.

Thereby I do not wish to profess the view that extremely immoral opinions and arguments should not be subject to academic investigation at all, that it should be forbidden to think

about them etc. Quite the reverse – without appropriate rational justification even deeply socially rooted respect to human values cannot last long. I am only saying that they should not be allowed into academic discourse as *legitimate, academically defensible positions*, as *partners* (the academic legitimization of a position is not a necessary condition of its being theoretically investigated). In particular this means the first of the two possible ways of conceiving the expression “not admit in discussion” distinguished above. Of course, if similar opinions are voiced somewhere and are seriously defended, the academic community should critically react – which does not necessarily mean disputing the views of defenders of the Holocaust or torturing children as if they were partners, legitimating their views by admitting them to standard academic platforms. As already said, the adequate reaction in such case is precisely to – with precise reasoning – point out that a defender of such positions cannot become a relevant discussion partner for a morally responsible disputer.

Doležal’s reference to the academic renown of authors such as Singer or Tooley is therefore irrelevant: if some morally unacceptable views have already entered academic ground, the only thing to do is to react adequately (in the above described manner) and *make an effort to push them out of academic discourse again*. But no obligation or need follows from it (rather stands in contradiction to it) to open up space for academic presentation of these views to another proponent – moreover in the situation when such extreme positions have as yet not received any substantial academic support in the Czech milieu.

But perhaps Doležal did not wish to defend admitting Mitlöhner to academic discussion from principal, but rather from pragmatic positions (his wording seems to suggest that). Perhaps he believes that these views are so weakly justified that they will most effectively prove themselves impossible precisely in academic discussion, and thereby be disarmed.

Such conviction would not lack certain logic (especially if we consider the basement level of Mitlöhner’s text); I nonetheless believe that it would be considerably naive (and honestly doubt that Doležal [or Černý] in fact maintain it – their defence of the academic relevance of Mitlöhner’s paper seems to me rather too vigorous for that). For it does not take into account that the social impact of the fact *that serious discussion is conducted with someone at scholarly level* is much more important than that the person in question was beaten. To accept a certain position on an academic platform such as a scholarly journal simply means to *socially legitimate it* regardless of how the discussion turns out from the academics’ standpoint. Doležal without doubt knows several convincing arguments against Singer’s position and these arguments have been stated in many discussions many times.²⁹ But were Singer’s opinions discredited and marginalized as a result? No – quite the reverse: due to the fervour and extent of the discussions he has stirred he is at present regarded as one of the most important contemporary bioethicists, so that Doležal himself uses his renown as an argument when he defends having provided space for Mitlöhner.

Perhaps Doležal could point out that there is no danger of that in Mitlöhner’s case, seeing how low the standard of his paper is. But then we should ask: if the editorial board was aware of the poor quality of the paper, shouldn’t it have all the more been rejected in the review process, or at least returned to the author for changes? For to accept a paper in a scholarly periodical means to signal to the author that it is regarded as a quality contribution to scholarly investiga-

29 Let us mention at least one of the most important contemporary proponents of a metaphysically grounded natural law ethical conception and long standing Singer’s opponent John Finnis (the last important duel took place in public discussion at the University of Princeton, August 15th, 2010).

tion, which is taken seriously; publishing a paper with the conviction that it does not meet the standard, only for the purpose of discrediting the author, would therefore be maliciousness that should not find place in academic discourse (not even in such cases as Mitlöhner's).

I therefore believe that Doležal is wrong when he says that "the most suitable defence is discussion and reasoning defence, or rational analysis proving that the theses endorsed by the authors can be refuted". In a society of supremely rational beings that would perhaps be the case (though in such world we would probably not be obliged to discuss the morality of infanticide); but in real life much greater significance is assigned to the legitimacy attributed to a view by acknowledging it as academically relevant. Further, rational analysis refuting the morality of infanticide can be carried out even without granting academic legitimacy to proponents of such a position. I therefore consider Doležal's defence of the publication of Mitlöhner's text inconclusive in this point as well.

4. Hypocrisy or epistemic irresponsibility of Mitlöhner's critics?

Although I believe that the overall attitude of T. Doležal, to which D. Černý also subscribed,³⁰ to the affair as a whole cannot be defended,³¹ I nonetheless must concede one point to those two gentlemen, when they point out that the defence of infanticide presented by Mitlöhner is closely logically linked to artificial abortions: one cannot consistently be outraged over killing born children and at the same time defend the ethical admissibility of killing unborn children:

*"Do you want abortions? You will also get infanticide. Do you not want infanticide? Forget about abortions. Abortions also used to stir great emotions and fears; and look today. Some women go even as far as to regard the right to abortion as the most fundamental right of women, without which all others would lose meaning. Infanticide also stirs great emotions and fears; we will see in a few years."*³²

Here I must agree with Doležal and Černý: a society which is morally outraged by Mitlöhner's theses and at the same time defends its right to kill unborn children is either confused and inconsistent, or hypocritical – and since the logic of ideas usually sets itself through in the long run³³ we can really expect a change in the society's attitude to infanticide and to the human rights of children in early stages of post-natal development.

In this context the cogent diagnosis of S. Sousedík comes to mind:

*"Human rights are much spoken of in our times. This partially conceals the fact that our civilization at present has no broadly accepted thought procedure of justifying the idea of human rights. This fact is worrying, since it has two precarious consequences: For one thing we cannot explain to ourselves – much less to others! – why respect human rights at all. For another we lack the criteria for determining what really is a human right, and what is merely a partial peculiarity of this or that civilisation sphere or even a mere wilful requirement of some influential pressure group."*³⁴

³⁰ See paper quoted in note 9.

³¹ It is not just the general issue of whether ostracism of proponents of grossly unethical opinions is justified, but the simple fact that Doležal and Černý in their defence of Mitlöhner's text are deceptive concerning its real content and at the same time blame "journalists" for misinterpreting it.

³² See paper quoted in note 9.

³³ It would e.g. be possible to show that Singer's theory of the value of a human being is in essence encoded already in Lock's de-metaphysicised theory of personal identity grounded in memory.

³⁴ Stanislav SOUSEDÍK, *Svoboda a lidská práva*, Praha: Vyšehrad, 2010, p. 9.

And it is so: we still find outrageous when someone tramples on newborn children's right to life, but as society no more have any theoretically firmly grounded principles from which we could safely deduce this right.

What follows from this all? That someone who does not see the moral inadmissibility of killing unborn children has no right to denounce promotion of killing born children, the moral inadmissibility of which he does see? Or that since Czech society has accepted abortions we should not, in the interest of consistence, restrain it from accepting infanticide? Or perhaps that Mitlöhner's defence of infanticide is not so terrible after all, when it is not "in contradiction to ideas which have long been alive in society and are sometimes even referred to as achievements of the modern times"? Or should we according to Doležal and Černý deduce that in a society which admits abortions defence of infanticide is a legitimate discussion subject precisely for that reason?

I hope it is clear that none of the suggested implications hold as simply as that. Quite the reverse: if we agree with Černý and Doležal that both abortions and infanticide are a grave moral evil, should we not rather point out that from the (as yet) unquestionable and beyond all discussion standing inadmissibility of infanticide implies some consequences for the moral status of killing the unborn?

The question should nevertheless be asked what exactly leads Doležal and Černý to not being willing to take the view sketched just now. Let us therefore attempt to penetrate the problem somewhat deeper.

I suspect that the call of Doležal and Černý for a "meaningful discussion" of theses presented by Mitlöhner, despite all their proclamations of "resolute disagreement with the views of JUDr. Mitlöhner", conceals the conviction that these views are in fact quite well defensible. Doležal and Černý do not agree with them, yet they do not see them as evidently unacceptable and condemnable (as we e.g. spontaneously condemn the Nazi belief of the inferiority of the Jews), they believe that they can be "reasonably" defended – in short, that despite their own conviction they sense the question of the admissibility of infanticide as an *open*, perhaps even *pressing issue*. Therefore they are understandably irritated by the view of those who do not regard Mitlöhner's theses as worthy of discussion, who do not view the question of the admissibility of infanticide as open and actively stand up against attempts to open it.

Now the question is which of these two attitudes or epistemic states is more adequate or more desirable – whether the one of Doležal and Černý or that of those who criticize them – and which of the sides should therefore be persuaded to change. Is it more appropriate, pertinent, reasonable or human to hold that Mitlöhner's views are evidently inhuman, and therefore unworthy of serious academic discussion, or should those who endorse this view rather give it up and (exactly like Doležal and Černý) admit that the views defended by Mitlöhner deserve to be seriously taken into account, deserve "academic respect" – *without conceding that Mitlöhner is right*?

The reasoning of Doležal and Černý points in the latter direction; and their allusions to the inconsistency and lack of principal grounding of Mitlöhner's fundamental critics suggests the reason behind their position: they apparently consider the epistemic attitude of their opponents to be so to say *epistemically irresponsible*, i.e., insufficiently epistemically grounded, dogmatic. And I am afraid that we must concede to the two gentlemen that it is in most cases in

fact so. Are they not right, then, when they claim that on the part of Mitlöhner's critics it is in fact a case of irrational "witch-hunting"?

Such an argument would be founded by a general principle which could be formulated as follows: *excluding a view from academic discussion without solid theoretical justification is always irrational and inadmissible*. At first glance this principle appears attractive; but can we really consider it to be universally valid? I will attempt to show that this is not so using a counterexample.

Contemporary society is unanimous in that certain views *ought to be a priori* excluded from academic discussion: no one is e.g. willing to admit academic discussion of whether Jews have the same rights as other people. The overwhelming majority of the educated public take this view, and if someone attempted to open such a discussion in public ground, the overwhelming majority of the educated public would without doubt speak up in a vigorous manner, as they did in the case of Mitlöhner. But: do the overwhelming majority of the educated public have any solid theoretical justification for the universality of human rights? I believe, together with Sousedík, that it is evident that they do not (even if we narrowed "the educated public" down to "philosophically educated public"), and I have confirmed this fact many times in my own experience. If that is the case, then we must either concede that a priori ostracism of anti-Semitic views is irrational and inadmissible, or we must reject the above principle.

Is there a positive reason why we should do the latter? I believe there is. It seems to me that it is quite natural to concede that taking certain moral attitudes need not be legitimized only theoretically (by epistemic justification provided by some ethical theory), but also in some naturally intuitive way – Thomas Aquinas e.g. speaks of knowledge *per connaturalitatem*, i.e., knowledge in virtue of some natural affinity:

*"Now rectitude of judgment is twofold: first, on account of perfect use of reason, secondly, on account of a certain connaturality with the matter about which one has to judge. Thus, about matters of chastity, a man after inquiring with his reason forms a right judgment, if he has learnt the science of morals, while he who has the habit of chastity judges of such matters by a kind of connaturality."*³⁵

It is evident that people quite commonly take moral stances and decide for moral acting *primarily* in this "intuitive" manner; a theoretic ethical consideration comes in the overwhelming majority of cases only as *reflection* of natural moral intuition. Should we denounce this common human practice as irrational and dogmatic?

It seems evident to me that not. Thereby I certainly do not wish to claim that rational consideration cannot and should not correct the original intuitions, sometimes even quite radically. But I consider quite evident that, *even when this reflection is lacking*, acting on strong moral intuitions is not irrational (where the Thomistic theory of knowledge in virtue of connaturality can serve as a possible explanation *why* it is not irrational, though it is not necessary for defending the *fact* of this rationality – which is, as I claim, *evident*).

If therefore there is a dominant shared moral intuition in a society that certain views are quite evidently inhuman, then a priori exclusion of such views from academic discussion is not irrational or dogmatic in a pejorative sense, even though there perhaps is no robust theoretical

35 "Rectitudo autem iudicii potest contingere dupliciter, uno modo, secundum perfectum usum rationis; alio modo, propter connaturalitatem quandam ad ea de quibus iam est iudicandum. Sicut de his quae ad castitatem pertinent per rationis inquisitionem recte iudicat ille qui didicit scientiam moralem, sed per quandam connaturalitatem ad ipsa recte iudicat de eis ille qui habet habitum castitatis." – Thomas Aquinas, *Summa theologiae* II-II, q. 45, a. 2, co.

justification of their inhumanness available – at least in that the burden of reasoning always rests on the one who questions the apparently natural moral intuitions. If Mitlöhner had written a precisely argued paper dealing with all the relevant arguments for the untouchability of human life, it would *perhaps* be in place to consider whether the strength of his arguments does not prevail over the positive presumption for natural moral intuitions and whether it should not be admitted to academic ground (the responsibility for deciding this rests on the reviewers and editorial board of the journal in question). But such situation did not occur by far – on the scholarly merits of Mitlöhner's paper see above – and Mitlöhner's critics are therefore quite justified and rational to call for a priori ostracism, even if they did so only based on a natural sense of morality, without theoretical justification, or even in contradiction to some other erroneous moral principles which they endorse and which are consonant with Mitlöhner's view (e.g. support of right of woman to kill her unborn child).

Conclusion

In this text I attempted to show several aspects of the self-plagiarism affair of JUDr. Mitlöhner which I consider worth noticing, and based on their analysis reach a rational view of the matter.

It is first of all the fact that self-plagiarism itself is by far not the worst aspect of the case, which comprises a number of sometimes much more fundamental failures. What I find in this context most disturbing is the fact that in contemporary academic milieu a text of this quality and moral content – essentially an *ideological agitprop of an old communist apparatchik* – can be regarded as a legitimate subject of serious academic debate and be defended as such.

In connection with this I have also attempted to defend the thesis that positions aiming at the destruction of elementary human values, and first of all human dignity as such, ought to be excluded from the pool of respected discussion alternatives in academic discourse – since universal moral values and goals are superior to the specific values and goals of academic discourse. For academic discourse does not take place in a vacuum or a hermetically closed lab but in society, and the views presented and defended in it have social and ethical impact – which at the time of information globalization are much stronger and much earlier than ever before. Against T. Doležal and D. Černý I defended the thesis that such exclusion is justified even when it is not based on any robust and consistent ethical reasoning, but merely on natural human moral sense.

To conclude I will permit myself to draw an entirely concrete “moral”: Our euthanasia proponents mostly still profess that if this achievement is introduced into our legal system it will be absolutely out of the question that anyone except the patient herself decide about the killing. Can anyone who has got to know Mitlöhner's views and the inability of a part of our scholarly community to clearly and uncompromisingly exclude them from relevant bioethical discussion take this claim seriously any more?

The Affair of JUDr. Mitlöhner: Case Analysis and Broader Context

Abstract The discussion article aims to analyse various aspects of the recent Mitlöhner self-plagiarism affair. The author maintains that self-plagiarism as such is not the worst aspect of the matter, but that there are several much more important failures in the case. The author regards as most disturbing the

fact that such a low-quality and morally dubious text can be viewed as legitimate object of academic discussion, and as such be defended, in the present academic milieu. The author further defends the claim that opinions aimed at the destruction of elementary values of humanity, and especially of human dignity as such, should be excluded from the pool of respectable alternatives in academic discourse; the reason being that general moral goods and goals are superior to the specific goods and goals of academic discourse. By way of polemic with T. Doležal and D. Černý the author defends the view that such exclusion is justified even when it is not backed by any robust and consistent ethical reasoning, but merely by natural human moral sense.

Keywords Miroslav Mitlöhner, academic ethics, ethics of academic discourse, ostracism, self-plagiarism, infanticide