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Public health ethics

Public justification and public trust

Public health as a moral enterprise and as a goal

Public health is a political and social undertaking, as well as a goal of this collective activity. The relationship between health and community life, recognized throughout history, is now emphasized in public health's vision of "healthy people in healthy communities" and in its focus on collective action "to assure the conditions in which people can be healthy" ([1], p. 1). These words suggest that public health involves not only traditional government action to protect the public from imminent threats, but also, at a more fundamental level, cooperative behavior and relationships of trust in communities, as well as a far-reaching agenda to address complex social, behavioral and/or environmental conditions that affect health.

As a political undertaking, public health includes at a minimum government's central role, grounded in its police power, to protect the public's health and to provide public goods that would not otherwise be available from individual action alone. Law, with its foundation in a society's political philosophy, provides the framework for the powers and duties of the government to protect public health; sets boundaries on state power to limit individual rights and private interests in order to promote health; and creates incentives and disincentives for individual or organizational activities that affect health.

Government public health actions present at least two types of ethical/political challenges [2]. One set of challenges focuses on the scope of public health, e.g., does government have a public health duty to prevent chronic disease by addressing behavioral (sedentary lifestyle) or socioeconomic (poverty) risk factors? Another set of ethical issues involves the appropriate means of public health intervention, e.g., should government outlaw risk-taking behavior such as riding a bicycle without a helmet? When is the state justified in quarantining a noncompliant patient with tuberculosis (TB)? The state's use of its police power, particularly in paternalistic or coercive policies, raises important ethical questions for a liberal, pluralistic democracy and requires moral justification that the public in whose name the policies are carried out could reasonably be expected to accept.

As a social endeavor, public health includes many forms of social and community action and increasingly involves overlapping networks of individuals and organizations, including governmental and private agencies, profit and not-for-profit stakeholders, professionals from many disciplines, and citizens, all working together over time to improve the population's health and the living conditions in the community. Relationship-building, whether between public health officials and the public they serve, or among community partners, is not merely instrumental, but rather is part of the substance of public health work. Particularly at the local community level, public health interventions, e.g., those that focus on socioeconomic or behavioral risk factors, tend to be multi-dimensional, sustained over months or years, and context-dependent. Community public health campaigns to reduce youth tobacco use are examples of complex, multifaceted programs that depend on community coalition-building and partnerships, and numerous social institutions, such as the public education system, in order to affect changes in social norms and behaviors related to teen smoking. Ethical analysis in this sphere of public health extends beyond the political to include professional, institutional, and civic duties as well.

As a result, public health ethics draws on the overlapping domains of political, moral, and social philosophy. As a normative enterprise, public health ethics can provide a framework to explore the fundamental ethical values that define the relationships of the individual, the state, and social institutions in public health activities aimed at public health goals. It can also provide ways to reason about the conflicts that arise among those ethical values, for instance, in the selection of public health interventions.

Ethical conflicts about public health interventions

Here we will only be able to sketch a few key elements in a framework for public health ethics. These elements address ethical conflicts that arise in the selection of means to protect and promote public health in a liberal, pluralistic, democracy and within what Michael Sandel calls our "public philosophy." By this, Sandel means "the political theory implicit in our practice, the assumptions about citizenship

and freedom that inform our public life" ([3] p. 4).

Within this context, ethical conflicts arise on several levels; we will focus on two of those levels: (1) determination of public health policies, and (2) decisions by public health officials that are not fully determined by public health policies. Public health policies, including various governmental decisions by legislative, executive, administrative, or judicial bodies, rarely fully determine public health officials' actions. Instead, these policies usually grant fairly broad authority to public health officials to pursue public health goals within certain constraints. Our sketch will apply both to the formation of public health policies and to public health officials' decisions within these indeterminate policies.

There is a widespread consensus that public health is a good in itself and for what it enables the society to do. It thus has both intrinsic and instrumental value. As a public good, public health is more than the summation of individual health indices, and individual actions alone will not suffice for its full achievement. Some public policies have a direct and primary goal of public health, while others may have an indirect impact on public health. We will concentrate on the former.

In the pursuit of public health goals, two critical sets of questions focus on the selection of means of intervention. The first set concerns the selection of effective and efficient interventions to protect and promote public health; the second concerns any ethical and other constraints that may apply to possible means. The second set of questions presupposes that the ends justify the means, but not all means. It presupposes that we should evaluate public health measures not only by their effectiveness and efficiency in the pursuit of public health but also by other values, such as liberty, privacy, and confidentiality of information, that also constitute society's identity.

Several lists of principles or values have been developed for public health ethics, as distinguished from medical and healthcare ethics. For instance, Peter Schröder has identified five principles for a public health ethic: maximizing health/well-being, respect for human dignity, justice, efficiency, and proportionality [4]. And we have identified a much longer list of general moral considerations in public health ethics: producing benefit; avoiding, preventing, and removing harms; producing the maximal balance of benefits over harms and other costs (often called utility); distributing benefits and burdens fairly (distributive justice) and ensuring public participation, including the participation of affected parties (procedural justice); respecting autonomous choices and actions, including liberty of action; protecting privacy and confidentiality; keeping promises and commitments; disclosing information as well as speaking honesty and truthfully (often grouped under transparency); and building and maintaining trust [5].

For purposes of this discussion, we will assume that several of these ethical principles or values provide a warrant for societies to pursue the goal of public health and that some of them at times are in tension with effective and efficient means to achieve public health goals. Some commentators view conflicts between public health and other values as common and even inevitable [6, 7], while other commentators view them as rare and generally avoidable [8–10]. For the first group, the harmony between public health and liberty – the values that we will concentrate on for illustrative purposes in this discussion – is contingent, while, for the second group, these values do not inherently conflict and hence do not always necessitate trade-offs. Instead, for the second group, respecting values regarding means will often help achieve public health goals. Although this debate has drawn in vigorous contenders on both sides, it suffers from overstatements and exaggerations on both sides.

For the most part, effective public health measures co-exist with liberty and other values, whether expressed as civil rights and liberties or as human rights. Furthermore, quite importantly, respecting those values can contribute to public health, in part by creating a basis for and a climate of trust. It is generally possible to find – and, in our judgment, imperative to seek – effective public health measures that do not infringe these other important values. Trade-offs are inevitable in the sense that effective public health policies cannot always avoid them. However, it is a mistake to assume in advance that they are inevitable in any particular situation. For example, if, through persuasion or the provision of adequate incentives, a society can get individuals to choose voluntarily to exercise their liberty in ways that protect or promote public health, there would be no trade off.

Part of the difficulty, in our judgment, is the picture that often shapes interpretations of public health deliberation and decision-making. That picture commonly focuses on balancing public health and other values such as liberty that some public health interventions may infringe [7]. While useful, this balancing model does not fully and adequately depict the process of reasoning about public health interventions, particularly when those interventions appear to infringe some values, such as liberty, privacy, and confidentiality.

Justifying public health interventions: presumptions/rebuttals

Resolving dilemmas

We need a principled and also process-oriented framework for addressing ethical dilemmas that sometimes arise around public health interventions. In any ethical dilemma, two dimensions of principles or values require attention. One is their range or scope, the other their weight or strength. Reasoning through value conflicts requires attention to both dimensions. Sometimes, it may be possible to specify one value, by restricting its range or scope, so that it does not conflict with the other [11, 12]. Often, however, it will be necessary to determine the relative weights or strength of the conflicting values [12]. We will identify three approaches and defend one approach as the most adequate for deliberation about public health policy in a liberal, pluralistic, democratic society.

Absolutist, presumptivist, and contextualist approaches

There are at least three possible ways to interpret the weight or strength of ethical values or principles: absolutist; presumptivist; or contextualist [13]. An abso-

lutist interpretation of the stringency of a particular value asserts its dominance either (1) against all other values or (2) only against certain other values. The first version of absolutism is highly implausible because it is easy to imagine scenarios in which we would believe, quite justifiably, that the value in question, such as liberty, should yield to some other value, such as public health. The second version of absolutism holds that the value in question defeats certain other but not all other values; this version often proposes a lexical or ranked order of values. While more plausible than the first version, this second version also encounters devastating counterexamples. A framework with an a priori rank ordering of values is finally unable to address all real-world complexities, whether the framework asserts "never trade off liberty for public health" or "public health always trumps liberty."

At the other end of the spectrum, the contextualist approach simply balances all of the relevant values in a particular context. For this approach, a balancing judgment in a particular context determines which value should have priority. However, by itself, the process of balancing appears to be too intuitive. For this reason, and because the community usually wins in any real conflict between the community and the individual, we need to put more initial weight on the liberty end of the scale, at least to the extent of requiring those who argue for the infringement of liberty to bear the burden of proof. That is what our "public philosophy" often does, at least within certain contexts. In moral discourse, presumptions, which are often expressed in the legal-like language of burden of proof, serve to structure reasoning in the face of indeterminancy and uncertainty [14].

In our judgment, a presumptivist framework best structures public health ethics in a liberal, pluralistic, democratic society. A presumptivist framework sets presumptions about means and interventions, but also views these presumptions as rebuttable and identifies the conditions for their rebuttal. Hence, it avoids certain deficiencies of both the absolutist and the contextualist approaches. On the one hand, it is clearly non-absolutist, since either liberty or public health can take priority in some situations. On the other hand, it moves beyond the contextualist approach's metaphorical balancing by admitting presumptions, burdens of proof, starting points, initial tentative weights, or heuristics in the selection of means to achieve the goal of public health. The presumptions emerge from a society's core values, as expressed and embodied in its constitution, laws, policies, and practices, as well as in its myths and stories, all making up the society's public philosophy. They structure, and should structure, without absolutely determining, the selection of public health interventions.

Justificatory conditions for liberty-limiting public health interventions

If the public philosophy of liberal, pluralistic, democracies establishes presumptions in favor of liberty, privacy, confidentiality, and the like, in the selection of public health interventions, then our moral discourse about public health policies, practices, and particular decisions should start with those presumptions. However, they are only presumptions, and presumptions can be rebutted. Hence, it is also important to identify rebuttal conditions, what we call "justificatory conditions" that indicate when the presumption in question can be justifiably rebutted [5, 13]. We will identify five justificatory conditions and illustrate them by reference to one liberty-limiting intervention, forcible quarantine, which is widely recognized as a legitimate public health measure in certain circumstances, such as the SARS outbreak or an avian influenza pandemic.

1. Effectiveness in the protection or promotion of public health

If there is no reason to believe that a quarantine would be an effective public health measure, then it would be a mistake to impose it. Indeed, not only would forcible quarantine under those circumstances be unwise, it would also be ethically unjustified. Interventions that infringe important social values must have a reasonable prospect of success in order to be justified.

2. Necessity

Even if forcible quarantine would probably be effective in some cases, it might not be necessary or essential. It might be possible, for instance, to secure voluntary compliance with quarantine requests without resort to the threat or use of force. Liberty and other presumptive values require a search for alternatives before they can be justifiably overridden. In short, a public policy that can accomplish its goals through voluntary cooperation has priority over threat or use of force.

This justificatory condition has implications for different strategies to ensure that persons with TB will complete their treatment until cured, in order to reduce the likelihood of long-term risks to others, particularly from multi-drug resistant TB. Other things being equal, the persuasion of, or the provision of financial or other incentives to, persons with TB to complete their treatment until cured should have priority over forcible detention. In such a case, proponents of forcible strategies bear the moral burden of proof. They must be able to provide strong reasons for their belief that a coercive approach is necessary and essential.

3. Least infringement of presumptive value

Suppose that forcible quarantine would satisfy the first 2 conditions in a particular set of circumstances. Public health officials should still seek the least restrictive and least intrusive alternatives – for instance, in home, in hospital or similar facility, in jail – consistent with obtaining the end that is sought. For some analysts, the condition of least restrictive or intrusive means is a corollary of necessity in that coercive measures should be necessary in degree as well as in kind. However, it is also helpful to view this condition as a specific requirement to minimize infringements of presumptive values. To take another example, even if it is justifiable to breach privacy or confidentiality in particular circumstances, this third condition places limits on the scope of the infringement, in terms of both the information that is disclosed and the parties to whom it is disclosed.

4. Proportionality

Some ethicists would fold the previous justificatory conditions into a broader conception of proportionality: If a spe-

cific quarantine measures would satisfy the three prior conditions, then it would be a proportionate response to the threat [15]. However, we view proportionality as a separate requirement because it involves balancing broader considerations. After determining that a proposed coercive intervention such as quarantine would satisfy the first three conditions, we still have to ask whether the probable benefits (in risk reduction), minus any probable negative effects, are sufficient to rebut the presumption in favor of freedom from governmental coercion.

5. Impartiality

Basic standards of fairness apply across public health interventions. More specifically, they require that coercive public health measures, such as quarantine, be imposed impartially. Even though this condition might seem to be unnecessary and even useless, a quick glance at serious outbreaks of infectious disease in the past reveals that victims have been singled out for blame along with others in such broad categories as race, ethnic background, socio-economic class, or geographical location, and have been subjected to stigmatization and discrimination. Far from being relegated to the past, stigmatization and discrimination occurred in the SARS outbreak in several places, including, for example, in Toronto against the Chinese [16].

Public justification in context

When societies confront difficult choices in public health – where fundamental socio-cultural and political values are at stake – they should attempt to act "in ways that preserve the moral foundations of social collaboration" at the core of public health ([17] p. 18, [18]). A presumptivist approach for public health ethics, which sets out core values and principles as starting points for deliberation, can provide a foundation for social collaboration and for enduring relationships of trust in public health. An explicit acknowledgement of shared core values and common goals and needs in public health can engender trust and support for collective action and even build a community of stakeholders by educating and enabling individuals

Zusammenfassung · Abstract

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Public health ethics. Public justification and public trust

Abstract

Viewing public health as a political and social undertaking as well as a goal of this activity, the authors develop some key elements in a framework for public health ethics, with particular attention to the formation of public health policies and to decisions by public health officials that are not fully determined by established public policies. They concentrate on ways to approach ethical conflicts about public health interventions. These conflicts arise because, in addition to the value of public health, societies have a wide range of other values that sometimes constrain the selection of means to achieve public health goals. The authors analyze three approaches for resolving these conflicts (absolutist, contextualist, and presumptivist), argue for the superiority of the presumptivist approach, and briefly explicate five conditions for rebutting presumptions in a process of public justification. In a liberal, pluralistic, democratic society, a presumptivist approach that engages the public in the context of a variety of relationships can provide a foundation for public trust, which is essential to public health as a political and social practice as well as to achieving public health goals.

Keywords

public health · ethics · liberty · relationships · trust

Public-Health-Ethik. Öffentliche Rechtfertigung und öffentliches Vertrauen

Zusammenfassung

Unter dem Gesichtspunkt, dass Public Health eine politische und soziale Unternehmung ist, entwickeln die Autoren einige Schlüsselbegriffe für einen auf Public Health zugeschnittenen ethischen Rahmen. Dabei zollen sie der Entstehung gesundheitspolitischer Strategien und den Entscheidungen von Amtsträgern des öffentlichen Gesundheitswesens besondere Aufmerksamkeit. Ihr Hauptaugenmerk liegt auf Ansätzen zur Lösung ethischer Konflikte bei Public-Health-Maßnahmen. Diese Konflikte treten auf, weil Gesellschaften neben dem Wert der öffentlichen Gesundheit noch eine breite Spanne anderer Werte haben, die manchmal die Auswahl der Mittel, um Ziele der öffentlichen Gesundheit zu erreichen, einschränkt. Die Autoren analysieren 3 Ansätze zur Lösung dieser Konflikte (absolutistisch, kontextualistisch, präsumptivistisch) und argumentieren für die Überlegenheit des präsumptivistischen Ansatzes. Sie erläutern kurz 5 Bedingungen unter denen präsumptive Annahmen in einem Prozess öffentlicher Rechtfertigung nicht annehmbar wären. In einer liberalen, pluralistischen und demokratischen Gesellschaft kann ein präsumptivistischer Ansatz, der die Öffentlichkeit im Kontext verschiedener Beziehungen beschäftigt, ein Fundament für öffentliches Vertrauen legen, was für Public Health als politische und soziale Praxis sowie für die Erreichung von Gesundheitszielen grundlegend ist.

Schlüsselwörter

Public Health · Ethik · Freiheit · Beziehungen · Vertrauen

and entities to see themselves as connected through health.

In a democratic political order, engagement of the public in public health deliberation is an indispensable part of our presumptivist approach because members of society are political and social stakeholders – they themselves have a stake in the on-going protection of fundamental values such as liberty and privacy that are displayed, embodied, and sometimes overridden for their benefit. Real-time public health decisions are socially situated within particular communities; hence, accountability to and transparency with the public requires that reasons, justifications, and explanations for practices, such as quarantine, be provided to ensure the public can support such actions. Even forcible quarantine requires considerable voluntary cooperation to be successful. At a minimum, justification requires that officials state, "We are choosing to impose quarantine in this context because…".

Context here includes the particular social, political, and institutional settings in which an action takes place. It also includes such factors as socioeconomic, cultural or demographic features of the population as well as the strength and quality of political and social relationships and discourse in the community. The need for public support directs our attention to relationships – "support from whom to whom?" – including, in the case of quarantine, the relationship between public health professionals and community members. Thus, relationships, built on common understandings, developed over time, of roles, obligations, and collaborations, frame the meanings of and justifications for public health decisions and engender the public's trust and willingness to support those decisions.

It is our contention that public health relationships provide a significant context for a framework of core values, presumptions, and justificatory/rebuttal conditions. Because public health is both a political and a social undertaking, as noted at the outset, we believe public health ethics must include both a framework for deliberation, such as we have proposed, and an explication of the professional and civic roles and relationships that provide the context for public health policies and actions.

The primary public health relationship is between community members (with a background understanding of reciprocal civic obligations of membership in that community) and public health professionals (with their understanding of their authority as government officials established by law, as well as their understanding of their role as health professionals in society). This relationship is complex in that it pulls together many perspectives, languages, and cultures: It includes government officials, on the one hand, who are professionals with particular expertise and professional values, and community members, on the other hand, with their numerous and simultaneous memberships in diverse groups, families, cultures, and religions.

In addition, the relationship between public health officials and community members is unique: public health officials act as both government agents with police powers, and as health professionals with responsibility for population health, a public good. In a democracy, public health officials might be thought of as physicians to the community, and the process of justification shares some features of a consent process between doctor and patient – one that is framed as a partnership based on voluntary action, with a strong presumption against any "unconsented to" action. Particularly in times of need and vulnerability, health professionals usually are approached as trustworthy because of general societal beliefs about and expectations of health professionals who have ethical commitments to act in the individual's or public's best interests. For instance, a public health code of ethics, entitled Principles of the Ethical Practice of Public Health and recently adopted by a number of public health professional organizations in the United States, explicitly states in Principle 6: "Public health institutions should provide communities with the information they have that is needed for decisions on policies or programs and should obtain the community's consent for their implementation" [19]. In a similar vein, the recent Institute of Medicine (IOM) report, The Future of the Public Health in the 21st Century, emphasizes the multisectoral dimensions of community health and suggests that a goal of public health is to collaborate with and facilitate the contributions of many community entities: "All partners who can contribute to action as a public health system should be encouraged to assess their roles and responsibilities, consider changes, and devise ways to better collaborate with other partners. They can transform the way they 'do business' to better act to achieve a healthy population on their own and position themselves to be part of an effective partnership in assuring the health of the population. Health policy should create incentives to makes these partnerships easier" ([20] p. 32).

Public health's emergency preparedness activities illustrate the ways that relationships provide the context for public health ethics. Emergency preparedness, as a community process, requires public health officials, first and foremost, to take an active role in building a community of stakeholders prepared to act when an infectious disease or terrorist threat occurs, and in generating community discussions of and deliberations about such policies as rationing scarce resources in an emergency. The fire department metaphor for public health illuminates this role, because fire officials "teach and practice prevention at the same time that they maintain readiness to take on emergencies" ([21] p. 40). Drills are important not only as instructive devices for practicing activities (such as 'know the nearest exit'), but also because, in the context of biopreparedness, we need to "prepare" our civic responses when challenged as a community. The purpose of public debate is not merely to reach a consensus on any one course of action, based on fair procedures, but also to build and strengthen our civic commitment to continued cooperation.

Consider, for example, the possible role of the local public health official in preparing a community for hospital triage or quarantine during a public health emergency. At a minimum, this role could and should include convening stakeholders, such as hospital administrators, community physicians, and community representatives, and sponsoring forums for public deliberation to develop and forge professional, institutional and public sup-

port for ethical guidelines. Forms of public engagement and consent could range from providing mere notice to the public through the media, to organizing town hall meetings, to conducting community focus groups and surveys about public values, to establishing an ethics board of community leaders and public representatives. Public health professionals should address which option for community engagement is appropriate, based on contextual factors such as community cohesiveness, expectations, and values. One aim of this activity is to create, over time, a public that cooperates with and trusts each other. The relationships this activity engenders provide the important social context for public deliberation and public justification when public health authorities believe that it is necessary to use liberty-limiting state power, such as forcible quarantine, or must adopt a rationing program because the vaccine supply is limited.

Whatever the governmental public health action – whether the collection of population data during a disease outbreak, or forcible quarantine, or the allocation of scarce vaccines, or an on-going community program to change social norms – a primary goal should be the development and maintenance of relationships of trust, defined in a report from the Institute of Medicine as "the belief that those with whom one interacts will take one's interests into account, even in situations in which one is not in a position to recognize, evaluate or thwart a potentially negative course of action by those trusted" ([21] p. 40).[1]

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[1] For a fuller development of several ideas in this article, see 2, 5, 12, 13, and 18, from which we have drawn some ideas and formulations.

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