

# Philosophy and Ethics in Public Health

There are many definitions of public health, but the simplest is that public health is the constellation of actions that a society takes to enable people to enjoy good health and remain free of disease.

The goal of achieving a healthy society is intrinsically good, since it reduces disease, suffering and enables people to live longer, happier lives. These benefits have tangible benefits such as greater productivity and reduced spending on medical care.

While these goals are unarguably good, there is still debate as to how much money should be directed to public health when there is competition for limited resources, or whether the cost of a particular public health intervention justify the benefits.

Other considerations:

- What freedoms may be in conflict with the intervention?
- Do the benefits of interventions outweigh the potential for unknown risks?

**Public health ethics involves the principals that guide us as a society in making decisions about public health that conform to our morals and standards while resolving or minimizing conflicts.**

## Learning Objectives:

1. Discuss the philosophical justifications for public health
2. Discuss the moral considerations for public health
3. Discuss the justifications for overriding interests such as freedom of action privacy and confidentiality in order to achieve public health goals
4. Explain the key questions that should be addressed when analyzing an ethical issue in public health
5. Define the "police power" and discuss the major precedents set by *Jacobson v. Massachusetts*

## Philosophical Justification

Several theories had significant impact on shaping public health ethics.

Jeremy Bentham was a proponent of utilitarianism, evaluating actions based on their consequences in producing happiness and contributing toward the greater good. His philosophy was "the greatest good for the greatest number".

John Stuart Mill was also a utilitarian but refined his views to distinguish higher and lower pleasures. "The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others." He was not absolute on this, as he acknowledged that no system of ethics requires the sole motive of all we do be based on duty. 99% of all our actions are done from other motives, and rightfully so if the rule of duty does not condemn them.

"Public Health draws its foundational legitimacy from the essential and direct role that health plays in human flourishing... However, the general justification is sometimes too broad to provide sufficient moral warrant for specific public health policies which are implemented by the state and affect the liberty or privacy or corporate or individual persons." -JSM

## Overall Benefit

All individual population members benefit from public health agencies and interventions, even if they don't benefit from all interventions. Agencies such as the CDC and FDA are charged with improving health within the population. While public health regulations may pose restrictions and inconvenience to some of us, the overall effect is an improvement in the quality of our lives.

## Collective Action and Efficiency

Public health operates at the population level, and many of its benefits could not be achieved without regulation and coordinated efforts of many trained people with special expertise. For example, food safety at the level we currently enjoy could not be achieved without extensive, coordinated effort by many agencies.

## Fairness in the Distributions of Burdens

A basic premise is that burdens and benefits should be distributed fairly. For example the requirement for childhood vaccinations encourage high levels of population immunity and provides a distribution of both the benefit of protection and the burden of having to get vaccinations.

## The Harm Principal

John Stuart Mill established what we now know as the harm principal, which states power can be exercised over members of a society when the purpose is to prevent harm to others. This principle provides justification for limiting individual freedom through isolation or quarantine to control the spread of disease, and even for mandatory treatment in some instances.

This was also an important justification for banning smoking in public places once there was evidence of harm from secondhand smoke. This brings up the question regarding the extent of harm and weighing in on the curtailment of personal liberty. Mill recognized by separating lesser freedoms and fundamental freedoms that should not be interfered with in the absence of compelling justifications.

## Paternalism

Paternalism generally has a negative connotation implying unwanted interference. However, the notion of paternalism as a justifications comes into play in the context of protecting vulnerable people such as those with cognitive disability or immaturity (situations where autonomy is already compromised and protection is needed).

## Moral Considerations

The United States, constitution recognizes that police power is needed to enforce laws to promote health, safety and general welfare. This led to the concept of "strict scrutiny" whenever the use of police power threatens fundamental freedoms. Ex:

- Is there justification for the state to require citizens to use seat belts while driving or helmets while riding a bike?
- Is there justification for quarantining citizens with active tuberculosis to ensure they take their medications?

## Ethical essentials of public health:

1. Producing benefits
2. Avoiding, preventing and removing harms
3. Distributive justice - distributing benefits and burdens fairly - and procedural justice - meaning ensuring public participation
4. Autonomy - respect for autonomous choices and actions
5. Protecting privacy and confidentiality
6. Keeping promises and commitments\
7. Transparency - disclosing information honestly
8. Building and maintaining trust

## Justification for Infringing Interests

### Effectiveness

One important question is whether there is reason to believe that a proposed public health intervention, such as quarantine, would be effective. If not, it would not be ethically justified to restrict individual liberty.

## Necessity

Even if forced quarantine might be effective, it might not be necessary. For example, Tuberculosis (TB) is one of the great killers of all time, especially in recent years due to the emergence of a multiple-drug resistant TB. The CDC recommends Directly Observed Therapy (DOT) in which the patient is required to meet with a health care worker every day or several times a day to ensure the medications are taken. New York City uses a tiered system of DOT. Most patients are observed taking their medications via smart phone. However the city may impose quarantine on TB patients at Bellevue Hospital, but these extreme measures are only used in extreme measures when infectious people habitually fail to take their medication. Every alternative must be exhausted before infringing on personal liberties.

## Least Infringement of Presumptive Value

In any given circumstance the least restrictive infringement that enables the goals to be achieved is the one that should be utilized. NYC's tiered DOT system is a good example. Similarly, if it were justifiable to breach privacy or confidentiality, the breach should limit the information disclosed as much as possible.

## Proportionality

Even after satisfying the previous three justifications, one must also consider whether the likely benefits justify the cost, both financially and in terms of personal interest. Here is a list of interventions from the most restrictive to the least restrictive:

- Eliminate choice
- Restrict choice
- Guide choice by incentives
- Guide choice by changing the default policy
- Enable choice
- Provide information
- Do nothing

## Impartiality

There have been a number of instances when coercive measures such as quarantine were applied more rigorous to certain categories of citizens. For example, coercive measures were applied disproportionately against the Chinese during the SARS outbreak in 2003.

Involvement of the public in deliberations about public health is essential, since community members are the most important stakeholders. Public health activities and interventions should be carefully explained to community members honestly and transparently.

# Analyzing Ethical Issues

There are several key questions public health policymakers should address when analyzing ethical issues:

1. What public health problems, needs, or concerns are at issue?
2. What are appropriate public health goals in this context?
3. What is the source and scope of legal authority, if any, and which laws and regulations are relevant?
4. What are the relevant norms and claims of stakeholders in the situation and how strong or weighty are they?
5. Are there relevant precedent legal and ethical cases?
6. Which features of the social-cultural-historical context are relevant?
7. Do professional codes of conducts provide guidance?

# Public Health Law

## Jacobson V. Massachusetts

In 1900 smallpox was still a significant issue. In 1900 there were 100 cases of smallpox in MA. By 1902 there were over 2300 infections. The board of health became concerned and mandated all citizens should get a smallpox vaccine if they had not been vaccinated since 1897. It was within the board's power to do so and had already been proven that vaccines were an effective measure for prevention. Many citizens were opposed to vaccines for various religious, political, and philosophical arguments as well as concerns about safety. Jacobson was a Swedish Reverend in MA who refused vaccination and was fined \$5. He sued, and lower courts upheld the fine and eventually it went to the SCOTUS where the court ruled in favor of the state. In essence, their decision ruled that public health laws have to be rational and reasonable noting that there are times we must give up our personal liberties for the common good. This case has been used as precedent on many following lawsuits, such as those regarding quarantine or mandating helmets on motorcycles.

## Police Power

While the power to create public health law exists in all levels of government. One could argue most the power of public health authority lies at the state and local level where police powers exist, the ability to enforce policy to help guide the health and welfare of the citizens. The 10th amendment of the Bill of Rights specifically reserves police power to the states and sometimes local authorities. The federal government can collect funds from taxes and distribute them to programs, or regulate commerce to stop the spread of disease. State and local health departments are responsible for the public health of their communities, rather than the CDC.

**Legal Epidemiology** refers to the study of law as a factor in the cause, distribution, and prevention of disease and injury. It applies rigorous, scientific methods to translate complex **legal** language into data that can be used to evaluate how laws affect population health. The idea that

law is a major determinant of health is only just starting to evolve, we are still studying the most effective interventions on smaller populations before introducing it to a larger population.

# Principals for Public Health Professionals

In 2010 a CDC sponsored project published a **code of ethics** for public health. Public health should:

1. Address principally the fundamental causes of disease and requirements for health, aiming to prevent adverse health outcomes
2. Achieve community health in a way that respects the rights of individuals in a community
3. Develop policies programs and priorities that are evaluated through processes that ensure an opportunity for input from community members
4. Advocate for, or work for the empowerment of, disenfranchised community members, ensuring that the basic resources and conditions necessary for health are accessible to all people in the community
5. Seek the information needed to implement effective policies and programs that protect and promote health
6. 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
7. Act on a timely manner on the information they have within the resources and the mandate given to them by the public
8. Incorporate a variety of approaches to programs and policies that anticipate and respect diverse values, beliefs, and cultures in the community
9. Be implemented in a manner that most enhances the physical and social environment
10. Protect the confidentiality of information that can bring harm to an individual or community if made public. Exceptions must be justified on the basis of the high likelihood of significant harm to the individual or others.
11. Ensure the professional competence of their employees
12. Engage in collaborations and affiliations in ways that build the public's trust and the institution's effectiveness

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