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CHAPTER 31

Public Health

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public health

by Lawrence O. Gostin

Framing the Issue

The political community does not have a clear sense of the concept of public health apart from the discourse around health care reform. Health care (access, cost, and quality) is certainly an important part of improving the public's health, but it is only a relatively small part. The Institute of Medicine defines public health as "what we, as a society, do collectively to assure the conditions for people to be healthy."

The IOM's definition emphasizes cooperative and mutually shared obligation ("we, as a society") and reinforces that collective entities (governments and communities) are responsible for healthy populations. The role of public health is to assure the conditions for people to be healthy, including educational, economic, social, and environmental factors that are necessary for good health.

Today, public health is more important than ever, as society faces the threats of emerging and resurgent infectious diseases (such as SARS), drug resistant forms of disease (such as tuberculosis), and the threat of disease through bioterrorism (such as anthrax and smallpox). The population faces an added burden of noncommunicable chronic diseases such as cancers, cardiovascular diseases, diabetes, and respiratory diseases, which are exacerbated by certain behaviors associated with modern lifestyles, like overeating, physical inactivity, and smoking. Due to the health risks of obesity, for example, the current generation may die sooner than their parents for the first time since modern data were collected.

Ethical Values in Tension

Public health regulation involves potential trade-offs between public goods and private interests. When public health officials act, they face troubling conflicts between the collective benefits of population health on the one hand, and personal and business interests on the other. Public health regulation is designed to monitor health threats and intervene to reduce risk or ameliorate harm within the population. At the same time, public health powers encroach on fundamental civil liberties such as privacy, bodily integrity, and freedom of movement, association, or religion. Sanitary regulations similarly intrude on basic economic liberties such as freedom of contract, use of property, and competitive markets. There are trade-offs between the collective benefits

Lawrence O. Gostin, JD, is associate dean for research and academic programs and the Linda D. and Timothy J. O'Neill Professor of Global Health Law at Georgetown University Law Center.

EXPERTS TO CONTACT

Lawrence O. Gostin, JD, *Associate Dean for Research and Academic Programs and the Linda D. and Timothy J. O'Neill Professor of Global Health Law, Georgetown University Law Center* • gostin@law.georgetown.edu, 202-662-9417

Erika Blacksher, PhD, *Research Scholar, The Hastings Center* • blackshere@ thehastingscenter.org, 845-424-4040, x257

of population health and personal interests in liberty and property.

Although there are undoubtedly tensions between individual and collective interests, there are also synergies. When public health authorities use voluntary measures, they are more likely to gain the cooperation of the community and, in particular, persons at risk. A voluntary approach is more consistent with encouraging people to seek testing, counseling, and treatment.

The fields of bioethics and medical ethics have richly informed the development and use of biotechnologies, the practice of medicine, and the allocation of health care resources. If a single value could be extrapolated from these traditions, it is that individuals are autonomous and have a strong claim to make decisions for themselves. Thus, if a person has the capacity to understand the nature and purposes of the decision at hand, she has an interest in making her own choice without any outside interference.

Ethicists have not devoted the same sustained attention to problems in public health, but this is beginning to change. Under the public health tradition, individual interests may have to yield to those of the wider community where necessary for the public's health, safety, and well-being. The public health tradition values prevention and views its successes or failures based on the benefits and burdens that accrue to populations rather than to individuals. Three ethical considerations tend to be involved in public health decisions: the harm principle, paternalism, and justice.

The Harm Principle

How do we know when society should choose individual autonomy over the common good, or vice versa? The risk of serious harm to other persons or property is the most commonly asserted and accepted justification for public health regulation. The so-called harm principle holds that competent adults should have freedom of action unless they pose a risk to others.

In competent individuals, harm to self or immoral conduct is insufficient to justify state action. Consequently, even those who advocate for the minimal use of state powers endorse liberty-limiting steps such as infectious disease control measures, vaccination, physical examination, treatment, and quarantine, at least in high-risk circumstances.

Public Health Paternalism

"Risk to self" is a much more controversial justification for public health regulation because the behavior is primarily "self-regarding"—that is, the conduct appears to affect only the person concerned. Classical regulation of self-regarding behavior includes mandatory motorcycle helmet and seat belt laws, gambling prohibitions, criminalization of recreational drugs, and fluoridation of drinking water. Paternalism is the intentional interference with a person's freedom of action exclusively—or primarily—to protect his or her health, safety, welfare, happiness, or other interests.

The case against paternalism assumes that individuals are self-interested and are the most informed about their own needs and value systems. Opponents of paternalism value permitting individuals to decide for themselves—even if, objectively, they make the unhealthy choice. A

defense of paternalism usually relies on internal and external constraints on people's capacity to pursue their own interests. Personal behavior is heavily influenced and not simply a matter of free will, so state regulation is sometimes necessary to protect an individual's health or safety. For example, everyone does not know that children are at risk of severe injury from front-seat air bags or that radon is prevalent and dangerous in homes. Even when information is widely available, consumers may misapprehend the risks. And advertising can persuade consumers to make unhealthy decisions about such things as tobacco, alcoholic beverages, or fast food.

Perhaps it is more accurate to think of public health paternalism as directed toward overall societal welfare rather than toward the individual. Public health policy is aimed at the community and measures its success by improved population health and longevity. Even if conduct is primarily self-regarding, the aggregate effects of persons choosing not to wear seatbelts or helmets can be thousands of preventable injuries and deaths. Thus, while risk to self is often the least politically acceptable reason for regulation, it is nonetheless clear that paternalistic policies can be effective in preventing injuries and deaths in the population.

Social Justice

Social justice is viewed as so central to the mission of public health that it has been described as the field's core value. Among the most basic and commonly understood meanings of justice is fair, equitable, and appropriate treatment in light of what is due or owed to individuals and groups. Justice, for example, can offer guidance on how to allocate scarce therapeutic resources in a public health crisis, such as pandemic influenza (see Chapter 10: Influenza Pandemic).

Social justice demands more than fair distribution of resources, however. Health hazards threaten the entire population, but the poor and disabled are at heightened risk. For example, during the Gulf Coast Hurricanes in 2005, state and federal agencies failed to act expeditiously and with equal concern for all citizens, including the poor and less powerful. Neglect of the needs of the vulnerable predictably harms the whole community by eroding public trust and undermining social cohesion. Social justice thus not only encompasses a core commitment to a fair distribution of resources, but also calls for policies of action that preserve human dignity and show equal respect for the interests of all members of the community.

The Law and the Public's Health

The most important social debates about public health take place in legal forums—legislatures, courts, and administrative agencies—and in the law's language of rights, duties, and justice. Law defines the jurisdiction of public health officials and specifies the manner in which they may exercise their authority. State public health statutes create public health agencies, designate their mission and core functions, appropriate their funds, grant their power, and limit their actions to protect a sphere of freedom.

The law can be an effective tool for safeguarding the public's health. Of the 10 great public health achievements in the twentieth century, most were realized, at least in part, through law reform or litigation: vaccinations, safer workplaces, safer and healthier foods, motor vehicle safety, control of infectious diseases, tobacco control, fluoridation of drinking water, family planning, healthier mothers and babies, and decline in deaths from coronary heart disease and stroke. Unfortunately, however, public health statutes are often outdated and internally inconsistent. This leads to inefficiency and may even pose a danger in a crisis. Two recent model public health laws—drafted at the Centers for Law and the Public's Health, a collaborative at Georgetown and Johns Hopkins Universities—have led to reform of public health laws (see box, "Model Public Health Laws").

Public health law consists of the basic statutes that empower public health agencies and ensure their viability, together with a number of other legal tools, including:

- **Taxation and spending.** Taxes can provide incentives for healthy behaviors (like deductions for health insurance) and disincentives for risk behaviors (like tobacco taxes). Spending can be on condition of states or businesses accepting health-producing policies (such as safety standards in exchange for the receipt of highway funds).

- **The information environment.** Government can educate the public, require labeling of food and drugs, and regulate advertising (for example, prohibiting targeting cigarettes or alcoholic beverages to children).

- **The built environment.** Government can

use zoning ordinances and city planning to make a good diet and physical activity the easier choice for citizens (by, for example, reducing fast food outlets and building parks).

■ **The socioeconomic environment.** Government can allocate resources and create policies that reduce vast inequalities in health based on socioeconomic status or race.

■ **Direct regulation.** Government can directly regulate individuals (such as through infectious disease powers) or businesses and professionals (such as through licensing, credentialing, and health and safety regulations).

■ **Indirect regulation through the tort system.** Attorneys and private citizens can use civil litigation to redress many different kinds of public health harms relating to the environment (like pollution), toxic substances (like pesticides or radiation), hazardous products (like tobacco or firearms), and defective consumer products (like toys, food, and drugs).

■ **Deregulation.** Sometimes laws pose obstacles to public health and so need reforming—for example, prohibitions against distribution of sterile injection equipment to illicit drug users as part of HIV/AIDS prevention programs.

On the Horizon

The United States faces many formidable challenges in safeguarding the health of its population from infectious and chronic diseases. The SARS outbreaks in 2003, the ongoing multidrug resistant tuberculosis epidemic, and the modern threat of pandemic influenza bring ethical values into tension. The duty to protect the public—a collective good—must be weighed against the individual rights of privacy, freedom of association, and liberty. A set of critical questions emerges:

■ What limits on privacy are justified by surveillance?

■ What limits on bodily integrity are justified by testing, physical examination, and treatment?

■ What limits on liberty are justified by isolation or quarantine designed to separate the healthy from the infected or exposed?

■ What restrictions of movement and economic liberty are justified by travel advisories to, and from, areas with these infectious diseases?

These ethical issues only become more powerful when society faces intentional infliction of harm through biological agents such as anthrax or smallpox. Against such challenges, policymakers' failure to move aggressively can have disastrous consequences, while actions that prove unnecessary will be viewed as draconian. The only safeguard is transparency. Policymakers must be willing to justify restrictive measures and openly acknowledge when new evidence warrants reconsideration of policies. Adopting ethical recommendations will be a necessary component of epidemic control in democratic societies. Public health decisions will reflect in a profound way the manner in which societies implicitly and explicitly balance values that are intimately related and inherently in tension.

RESOURCES

Web sites

• www.oneillinstitute.org--The O'Neill Institute for National and Global Health Law at Georgetown University. Includes information and resources on health law in the U.S. and abroad.

• www.publichealthlaw.net - The Centers for Law and the Public's Health, a collaborative of Georgetown and Johns Hopkins Universities. Includes model laws, case studies, and other public health law resources.

Recent news

• Alicia Mundy, "Plastic Chemical Spurs Concern," *Wall Street Journal*, April 16, 2008.

• Rachel Kaprielian and Herman Hamilton, "The Benefits of a Higher Cigarette Tax," *Boston Globe*, April 10, 2008.

• Jan Hoffman, "Vaccinating Boys for Girls' Sake?" *New York Times*, February 24, 2008.

• Paul Vitello, "A Health Department's Quandary: Warn the Public or Supervise the Doctor?" *New York Times*, November 17, 2007.

Further reading

• Lawrence O. Gostin, *Public Health Law: Power, Duty, Restraint*, 2nd ed., University of California Press, 2008.

• David P. Fidler and Lawrence O. Gostin, *Biosecurity in the Global Age: Biological Weapons, Public Health, and the Rule of Law*, Stanford University Press, 2008.

• Ronald Bayer, Lawrence O. Gostin, Bruce Jennings, and Bonnie Steinbock, eds., *Public Health Ethics: Theory, Policy and Practice,* Oxford University Press, 2007.

• Lawrence O. Gostin and Madison Powers, "What Does Social Justice Require for the Public's Health? Public Health Ethics and Policy Imperatives," *Health Affairs*, July-August 2006.