

PUBLIC HEALTH ETHICS

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1. Compulsory medical intervention versus external constraint in pandemic control

Would compulsory treatment or vaccination for COVID-19 be justified? In England, there would be significant legal barriers to it. However, we offer a conditional ethical argument in favour of allowing compulsory treatment and vaccination, drawing on an ethical comparison with external constraints—such as quarantine, isolation and ‘lockdown’—that have already been authorised to control the pandemic in this jurisdiction. We argue that, if the permissive English approach to external constraints for COVID-19 has been justified, then there is a case for a similarly permissive approach to compulsory medical interventions.

We will also discuss issues such as the appropriate role of the criminal law in public health/infectious disease control, as well as its alternatives, including ‘laissez-faire infectious disease control’.

Reading:

- Thomas Douglas, Lisa Forsberg, Jonathan Pugh, ‘Compulsory medical intervention versus external constraint in pandemic control’ (2020) 47 *Journal of Medical Ethics* e77 Available open access: <https://jme.bmj.com/content/47/12/e77>
- Elizabeth Shaw, ‘The right to bodily integrity and the rehabilitation of offenders through medical interventions: a reply to Thomas Douglas (2019) 12 *Neuroethics* 97 <https://doi.org/10.1007/s12152-016-9277-4>
- Written evidence submission to the UK Parliament Joint Committee on Human Rights consultation on ‘The Government’s response to COVID-19: Human rights implications’ (2020) Available here: <https://committees.parliament.uk/writtenevidence/9253/pdf/>

2. The value of bodily integrity

The body figures prominently in moral and political thinking, public policy, and the law. It is often claimed or assumed humans possess a right to bodily integrity, such that others cannot permissibly interfere with our bodies unless certain conditions are met. The idea seems to be that a right to bodily integrity specifically, not some broader right to autonomy or bodily and mental integrity, is worth having for its own sake. Despite its prominence, accounts of the precise nature and the value of bodily integrity remain surprisingly elusive. While the right to bodily integrity is often appealed to or asserted, its precise content and justification are rarely specified. Descriptively, it is unclear what is involved in bodily integrity and how broad it is in scope. Normatively, it is unclear why it is important and worth protecting by a right. In this seminar, we will focus primarily on the latter, normative question, though we will also touch upon the former in discussion. We will examine what makes bodily integrity or a right to it worth having or respecting, and in particular what might justify the special status the body is thought to enjoy. In doing this, we will consider several accounts of the right to, or importance of, bodily integrity,

including capabilities, autonomy, trespass, self-ownership, and respect accounts. We will seek to determine whether each of these accounts succeed in explaining why it is especially important to be free from interference with one's body, and why one ought to have a right to bodily integrity specifically, rather than, for example, some broader right to, say, autonomy, or bodily *and* mental integrity.

We will also consider more generally what rights, if any, we have against bodily and mental interference.

Reading:

- Thomas Douglas and Lisa Forsberg, 'Three rationales for a legal right to mental integrity' in Dave van Toor, Sjors Ligthart, Tijs Kooijmans, Thomas Douglas and Gerben Meynen (eds), *NeuroLaw: Ways Forward for Neuroscience, Justice and Security* (Palgrave Macmillan 2021)
Available open access: https://link.springer.com/chapter/10.1007/978-3-030-69277-3_8
- Sean Aas and David Wasserman, 'Bodily rights in personal ventilators?' (2022) 39(1) *Journal of Applied Philosophy* 73

3. Vaccination, purpose, and permissibility

There is a widespread assumption that vaccination should be voluntary, that is, that recipients' consent is required ('the consent assumption'). In this seminar, we will examine the consent assumption, by considering an argument that has been made in respect of interventions employing medical means for the purposes of crime-prevention. According to this argument—the *argument from purpose*—the acceptance of a consent requirement in respect of such interventions assumes that they are best understood as primarily (standard, therapeutic) *medical* interventions whose permissibility should be assessed against the standards of medical ethics, rather than interventions whose permissibility should be assessed against the standards of criminal justice ethics. This assumption relies on a mismatch between purpose and permissibility norms that requires justification. We will consider a parallel argument, according to which the acceptance of a consent requirement in respect of vaccination assumes that vaccination is best understood as a primarily (standard, therapeutic) medical intervention whose permissibility should be assessed against the standards of medical ethics, rather than an intervention whose permissibility should be assessed against the standards of public health ethics for public protective interventions. We will go on to consider three objections to the argument from purpose applied to vaccination: (i) that a consent requirement remains in place in respect of vaccination, regardless of purpose, because vaccination interferes with our bodies; (ii) that the argument from purpose mischaracterises the nature and purpose of vaccination; (iii) that the standards of public health ethics are not permissive, or are not as permissive as suggested, of nonconsensual interventions, and (iv) that the argument from purpose cannot be generalised from criminal justice to public health because recipients are criminally liable in the former but not the latter case. We will consider whether these objections are insurmountable, as well as considering some implications that follow if they are not.

We will also consider ethical issues arising in respect of ‘dual-purpose interventions’—interventions that can be used for either or both therapeutic and public protection purposes—including vaccines, more generally.

Reading:

- Lisa Forsberg, ‘Vaccination, purpose, and permissibility’, draft article available for circulation
- Lisa Forsberg and Thomas Douglas, ‘Anti-libidinal interventions in sex offenders: medical or correctional?’ (2016) 24(4) *Medical Law Review* 453-473
Available open access: <https://academic.oup.com/medlaw/article/24/4/453/2966838>

4. Mandatory vaccination for children and adults

In this seminar, we will consider the extent to which the justifications for mandating vaccination for children generalise to mandating the vaccination for adults. We will consider three arguments in favour of mandating the vaccination of children—one based on the obligations parents owe to children, one based on the state’s obligation to protect the vulnerable, and one based on the unique features of children’s well-being. We will then try to determine whether these arguments may justify mandating vaccination more generally, that is, also for adults with decision-making capacity. In addition, we will compare the arguments we have considered with those commonly provided for mandating the vaccination of adults.

We will also consider some ethical issues arising in respect of children’s consent to, or refusal of, medical interventions more generally.

Reading:

- Anthony Skelton, Lisa Forsberg, ‘Three reasons for making COVID-19 vaccination mandatory for children’, *The Conversation*, 13 May 2021
Available here: <https://theconversation.com/3-reasons-for-making-covid-19-vaccination-mandatory-for-children-160589>
- Roland Pierik, ‘Mandatory Vaccination: An Unqualified Defence’ (2018) 35(2) *Journal of Applied Philosophy* 381
- Anthony Skelton, Lisa Forsberg, Isra Black, ‘Overriding adolescent refusals of treatment’ (2021) 20(3) *Journal of Ethics and Social Philosophy*
Available here: <https://jesp.org/index.php/jesp/article/view/965>

5. Influencing for public health, part I: Is consent to psychological interventions less important than consent to bodily interventions?

It is standardly accepted that medical interventions can be permissibly administered to a patient who has decision-making capacity only when she has given her valid consent to the intervention. However, this requirement for valid medical consent is much less frequently discussed in relation to psychological interventions (‘PIs’) than it is in relation to bodily interventions (‘BIs’).

Moreover, legal and professional consent requirements in respect of PIs are laxer than the analogous requirements in respect of BIs. One possible justification for these differences appeals to the Differential Importance View—the view that it is presumptively morally less important to obtain explicitly given valid consent for PIs than for BIs. In this seminar, we will consider three possible justifications for the Differential Importance View, with the aim of determining whether they are successful. These invoke differences between PI and BIs with respect to implicit consent, risk, and wrongfulness, respectively.

Reading:

- Lisa Forsberg, Thomas Douglas, Julian Savulescu, ‘Is consent to psychological interventions less important than consent to bodily interventions?’, draft article available for circulation
- Tom Walker, ‘The obligation to provide information where valid consent is not needed (2017) 27(4) Kennedy Institute of Ethics Journal 501
Article will be circulated

6. Influencing for public health, part II: The ethics of using motivational interviewing and nudge-like influences to promote public health

Motivational interviewing (MI) is a person-centred counselling method aimed at strengthening individuals’ own motivation and commitment to change. It is used to promote behaviour change, especially among people ambivalent about such change. MI has a strong evidence base and as such has significant potential to benefit people in contexts within and beyond healthcare. But MI is also ethically contentious: sometimes accused of being manipulative and sometimes used in ethically dubious or impermissible ways, including in sales, and by government officials in the context of, for example, deportations and interrogations. MI is currently being rapidly disseminated to new areas and used to new ends, including many public health-related behaviour changes. This seminar will clarify and critically evaluate ethical concerns about MI, and identify factors relevant to its ethical practice. Doing so also has more general importance; since MI can be fruitfully employed as a case study to investigate crucial, broader questions regarding when and how it is ethically permissible to influence others’ behaviour. We will also examine how MI compares, ethically speaking, to nudges, which have been more widely discussed in the literature.

Reading:

- Isra Black and Lisa Forsberg, ‘Would it be ethical to use motivational interviewing to increase family consent to deceased solid organ donation?’ (2014) 40(1) Journal of Medical Ethics 63-68
Not available open access but will be circulated to students beforehand
- Andreas T. Schmidt and Bart Engelen, ‘The ethics of nudging: An overview’ 2020 Philosophy Compass 15:e12658
Available open access:
<https://compass.onlinelibrary.wiley.com/doi/epdf/10.1111/phc3.12658>