

Ethical Theories, Principlism and the Discourse Ethics in Public Health

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SCENARIO FOR DELIBERATIONS ON ETHICS

- HIV partner notification program
- Do we or do we not need to obtain consent from the index case before beginning to inform his or her sexual partners?
- If a professional has a mandate to protect population health, is it ethically legitimate for them to ignore the index case who has refused to let certain partners be contacted and informed?
- Is it ethical to contact sexual partners knowing that it will sometimes be difficult to conceal the identity of the index case?

ARGUMENTS VOICED BY DELIBERATION PARTICIPANTS

- Speaker #1 : “As a professional with a mandate to protect population health, I feel that there is a clear imperative to inform sexual partners, even if there is a risk that the index case will be identified and be the victim of social stigmatization as someone who is HIV-positive or transmitting illness.”
- IMPLICIT PRINCIPLE
 - Ethics: duty to protect health

ARGUMENTS VOICED BY DELIBERATION PARTICIPANTS

- Speaker #2 “I would make the same arguments as X, but I speak as an individual. I cannot let myself be party to the virus being transmitted to victims who are kept in the dark about their partner’s HIV-positive status. I would feel personally responsible.”
- **IMPLICIT PRINCIPLE**
 - Responsibility

ARGUMENTS VOICED BY DELIBERATION PARTICIPANTS

- Speaker #3 “People with HIV run the risk of seeing their lives destroyed once their HIV-positive status becomes widely known. As professionals, we have a responsibility to protect them; they are suffering enough as it is. At least we shouldn’t add to their suffering.”
- **IMPLICIT PRINCIPLE**
 - Compassion: harm reduction

ARGUMENTS VOICED BY DELIBERATION PARTICIPANTS

- Speaker #4 “Nowadays, all citizens are aware of the risks associated with unprotected sexual relations. All independent citizens have a responsibility to protect themselves. If everyone protected themselves, HIV-positive people wouldn’t be able to infect anyone, even if they didn’t reveal their HIV-positive status. HIV-positive people have a right to confidentiality and privacy, and that needs to come first.”
- IMPLICIT PRINCIPLE
 - Respect for privacy: autonomy

ARGUMENTS VOICED BY DELIBERATION PARTICIPANTS

Speaker #5 “Anyway, the program evaluations show that HIV infection could be controlled more effectively if we gave priority to keeping the HIV status of infected persons confidential. This isn’t about values, it’s about what is effective. What matters is the long-term results in terms of transmission of the virus.”

IMPLICIT PRINCIPLE

- Utilitarian: utility

A CONSTANT IN ETHICAL DELIBERATIONS

- When it comes time to take a clear position, each professional puts forward an ultimate argument that takes the form of a principle.
- We lack a shared vocabulary for ethics.
- We need a list of fundamental values (for Quebec society) that we can all accept as basic guides for action.

An ethics of public health needs to combine several theoretical approaches

- Ontological approach: search for full happiness, thinking about the purpose of life, man's place in nature, society
- Narrative ethics: bottom-up approach, concern for the context of life, local construction of meaning
- Code of ethics: professional's moral responsibilities, duty to ensure prevention
- Utilitarian: Balancing costs and benefits (economic, health, social, political, etc.)
- Empirical and descriptive ethics: take into account the main values of the populations targeted by programs
- Ethical relativism and pragmatism: raise questions about ethnocentric and dogmatic biases in the principles and values chosen

PUBLIC HEALTH AND NORMATIVE ETHICS - 1

- For six reasons, ethics can only be normative:
- 1) We can only follow an empiricist and relativistic ethics at the risk of adopting the attitudes of:
 - the “Conservative thug”
 - the “Complacent democrat”
 - the influence of “moral communities,” lobby of “comprehensive egoism” (Steven Kautz)
- 2) Must be based on a premise of social justice: treating everyone equitably
- 3) The fundamental values and principles on which it will be based must be explicit, clearly identified and defined.

PUBLIC HEALTH AND NORMATIVE ETHICS - 2

- 4) An implicit normativity already guides decisions in public health.
- 5) “It is an illusion to think that what we say is not based on a moral orientation that we believe is just” (translation, Taylor, 1998).
- 6) Public health must be able to assume and defend the ethical positions it takes, whether they are conscious or not. “These challenges require an analysis based on an ideological or normative commitment” (translation, Guttman, 2000).

DOES PRICIPILISM REPRESENT A SOLUTION?

- YES, ON THE CONDITION:
 - 1. That we see it less as a philosophical approach and more as a general analytic methodology
 - 2. That we combine it with an ethics of discussion to mitigate the risk of falling under the sway of “expert knowledge”

PRINCIPIALISM: DEFINITION #1

- Principles of Biomedical Ethics: Beauchamp and Childress. Six editions, from 1979 to 2008
- A term taken from its detractors
- An applied approach to ethics based on following a limited number of principles derived from several schools of philosophy
- Based on four orders of principles (autonomy, social justice, beneficence and non-maleficence)

PRINCIPLISM: DEFINITION #2

- These principles must be able to co-exist with other action guides, such as rules and virtues.
- Principles constitute “guides to action that are less general than theories but more general than the rules, judgments or case studies to which they are applied” (translation, Childress and Beauchamp, 1994 :79)
- Are normative generalizations that guide action

PRINCIPLISM: DEFINITION #3

- Principlism is not a principle-driven approach; rather, it is principle-guided (Childress, 1994)
- Principlism reminds us that the problem in ethics is not “having principles,” but rather following them dogmatically.
- Principlism is the complete opposite of a dogmatic approach.

PRINCIPLES IN PUBLIC HEALTH: E.G. ETHICAL FRAMEWORKS DURING A PANDEMIC

- The report “Stand on Guard for Thee” (2005), University of Toronto Joint Centre for Bioethics.
- In 2006, the Public Health Ethics Committee – *Comité d'éthique en santé publique* (CESP) published a notice on the Public Health Component of the Québec Pandemic Influenza Plan – Health Mission - *Volet santé publique du Plan Québécois de lutte à une pandémie d'influenza (PQLI)*.
- WHO, 2007, “Ethical Considerations in Developing a Public Health Response to Pandemic Influenza.”
- New Zealand, “Getting Through Together: Ethical Values for a Pandemic,” 2007.
- Great Britain, “Responding to Pandemic Influenza: The Ethical Framework for Policy and Planning,” 2007.
- United States, “Ethical Guidelines in Pandemic Influenza,” 2007.

Current principles and values

- Values related to morally justifiable treatment of patients: beneficence and non-maleficence, autonomy and privacy.
- Values that frame pandemic policies and that apply to communities: justice, solidarity, reciprocity, trust, the common good.
- Values and principles framing decision-making procedures and communication: transparency, public consultation and participation, accountability.
- Arbitration values: recognition of an obligation to weigh options and arbitration in *prima facie* principles = integration of principlism

STRENGTHS OF PRINCIPLISM FOR THE MANAGEMENT OF THESE PRINCIPLES

- *Prima facie* nature of principles
- Secular nature of principles
- Takes specific contexts, special cases and special situations into account
- Defines ethics as a place for arbitration between basic principles of equal value

FOUR METHODOLOGICAL PILLARS

- Explicit list of a limited number of principles that all have a *prima facie* value.
- Rejects a mechanistic application of principles and rules as well as any deductive application of one or more principles to cases, which would lead to a tyranny of principles.
- Proposes balancing, which depends on the weight given to competing principles. This weighing of contextual considerations may be either decided at the outset, establishing a hierarchy of stable principles, or established intuitively on a case-by-case basis (intuitive balancing).
- Specification, which is preceded by a qualitative adjustment of standards to specific cases and is implicitly an integral part of a principlism that is sensitive to contextual issues, circumstances and the specific nature of each case.

WEAK POINTS 1

- Limited number of principles
- Principles are selected rather than values. For an ethical framework based on key values
- Vague on how to identify the mechanisms for choosing between principles; ethical expertise

LIMITS TO THE NOTION OF A “COMMON MORALITY”

- Based on hypothetical universal standards (do not kill, lie, or do harm; do your duty, etc.) and moral ideals (e.g. charitable beneficence)
- Is more than a morality of common sense or a popular morality
- However, can ethical principles be derived from these universal, shared standards?
- More than a list of principles: a negotiated group of norms and values accepted by all for arbitration
- The ethics of public health must begin by distancing itself from the vain debate on developing a list of principles in order to open the way to an ethics of discussion.

LIMITS OF EXPERT ETHICISTS

- Moral philosophers are not in a better position to claim ethical expertise.
- Their mandate is to promote ways of thinking and tailored reasoning, not to provide answers.
- Solve moral problems, but also “create moral perplexity where none existed” (Caplan, 1989 : 74).
- Moral expertise would appear to be incompatible with democracy.

DISCUSSION ETHICS

PHILOSOPHICAL ACCEPTANCE

- Is defined outside the *a priori* criteria of a good life. It is found in the praxis, rather than in the substance, of discussion; i.e. in the process leading to consensus.
- “Values do not come simply from the fact that they are universally shared. In the approximately ideal conditions needed for a rational discussion, they must be approved by everyone who may be concerned.”
(Habermas)
- Discussion, a communication practice, represents the only solution apt to replace more or less violent quarrels of influence between the defenders of different values.

DISCOURSE ETHICS

PHILOSOPHICAL LEGITIMACY

- **Common sense:** a form of knowledge based on techniques, processes and rules that guarantee an ethically legitimate discussion.
- Here discourse refers to the procedure by which our motivations and practical convictions are validated through argument.
- Legitimacy is an ethical procedure that postulates that in our multi-moral societies, the only way to construct fair shared values is through argued and egalitarian discussion among all interested parties, discussion that leads to a consensus.

LIMITS OF THE DISCUSSION

- Specifies neither the source terms nor the basic vocabulary of discourse ethics
- Defines neither the kind of participants nor their role: experts or representatives of the public

CONCLUSION

- Importance of discourse ethics that examines a list of fundamental principles or values to prepare for action
- Avoid dogmatism in the arbitration between principles (e.g. letting autonomy or even justice dictate results)
- Fundamental: an ethno-ethics that defines the values that will serve as guides for action
- **A discourse ethics that avoids the abuses of ethical expertise and fosters the accountability of each and every public health professional**