University of BRISTOL

Persuasion, Paternalism, and 'Public Health Politicking'

John.Coggon@Bristol.ac.uk

Centre for Health, Law, and Society, @CHLSBristol

Accommodating Conscience Research Network Event

Cardiff University, 15th November, 2018

Introduction: Structure of Talk

- Part 1: Introductory framing (this has become quite long…)
- Part 2: Public Health 'Claiming' Ethics and Law
- Part 3: Public Health and Political Engagement
- Concluding reflections

Part 1

Introductory Framing

Science/Politics Duality within Public Health

Public Health England's first in its list of responsibilities:

> [M]aking the public healthier and reducing differences between the health of different groups by promoting healthier lifestyles, advising government and supporting action by local government, the NHS and the public[.]

UK Faculty of Public Health's mission statement:

> Our overarching mission is to promote and protect the health and wellbeing of everyone in society by playing a leading role in assuring an effective public health workforce, promoting public health knowledge and advocating for the very best conditions for good health.

www.gov.uk/government/organisations/public-health-england/about
www.fph.org.uk/our_mission

Tensions in Ethical Public Health?

Tension within 'public health' itself?:

- A science: objective, neutral ➔ epistemic authority
- A basis of advocacy: agenda-setting ➔ politically partisan

A line between (obligatory?) public/political engagement and persuasion and undue/unethical politicking?

Tension between mainstream bioethics and public health ethics?:

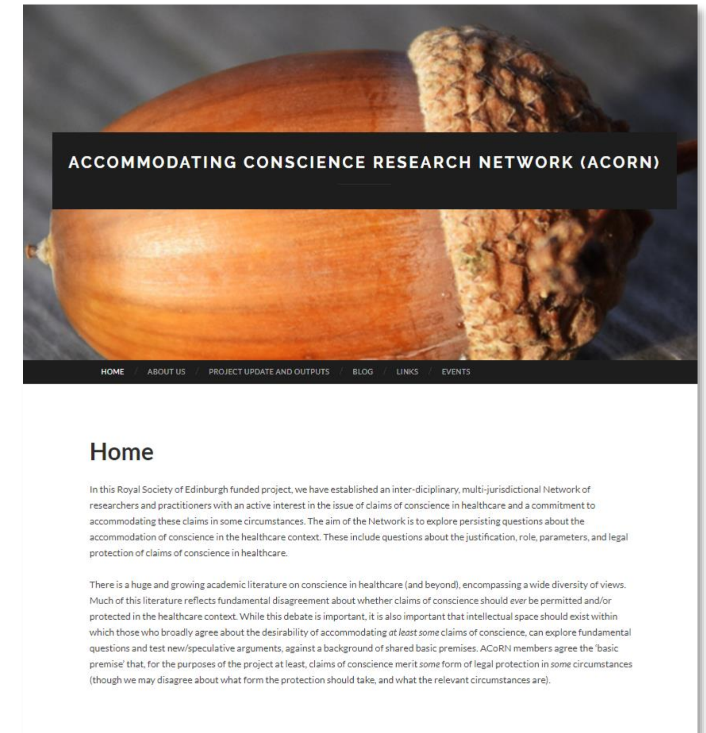
- Medical ethics: professional, technical, clinical expertise distinct from (moral, social, spiritual, religious, etc.) value judgments
- Public health ethics: promote particular concepts of social justice

Today’s Theme = ‘Why?’

Exploring healthcare as a ‘special case’: what is it about the healthcare context that makes it appropriate/necessary to allow Conscientious Objection?

Interesting perspectives to be brought from:

- Conceptualisations and critiques in and from public health ethics and law
- Critiques based on or related to discourses on ‘disabling’/domineering professions

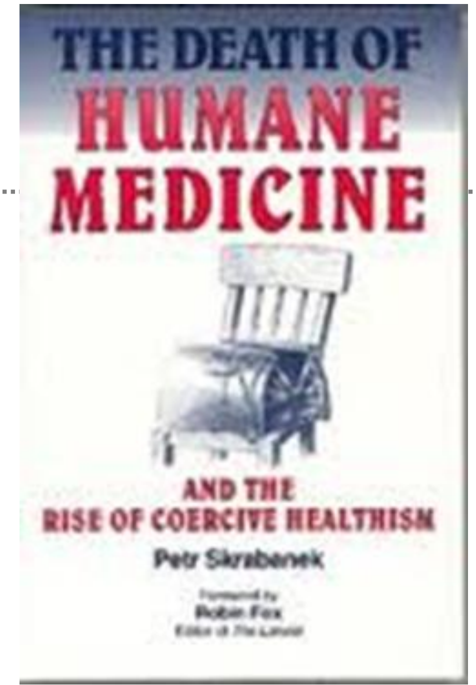


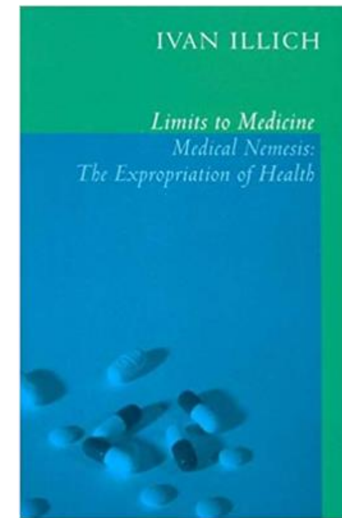
University of BRISTOL

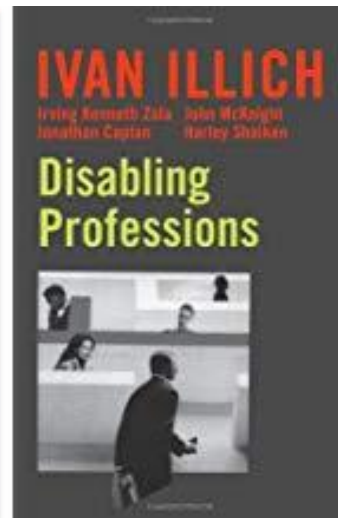
Petr Skrabanek

“Illich made a clear distinction between medicine as a liberal profession (in which medical knowledge and skills are used to alleviate the suffering of fellow men) and medicine as a dominant profession, dictating ‘what constitutes a health need for people in general and turning the whole world into a hospital ward’.”

Petr Skrabanek, *The Death of Human Medicine and the Rise of Coercive Healthism* (1994, Social Affairs Unit), p. 19







Petr Skrabanek

"Illich was not waging a personal vendetta against doctors. He, like anyone else, uses medical services, when necessary. His attack on the medical establishment was only a part of his more general exposure of the baneful effects which professional elites may exert, whether they are doctors, lawyers, churchmen, bureaucrats, educators, or counsellors. They may not stop at 'advising', but move on to monopolising the power to prescribe and codify. They not only define what is bad, but they also dictate what is good."

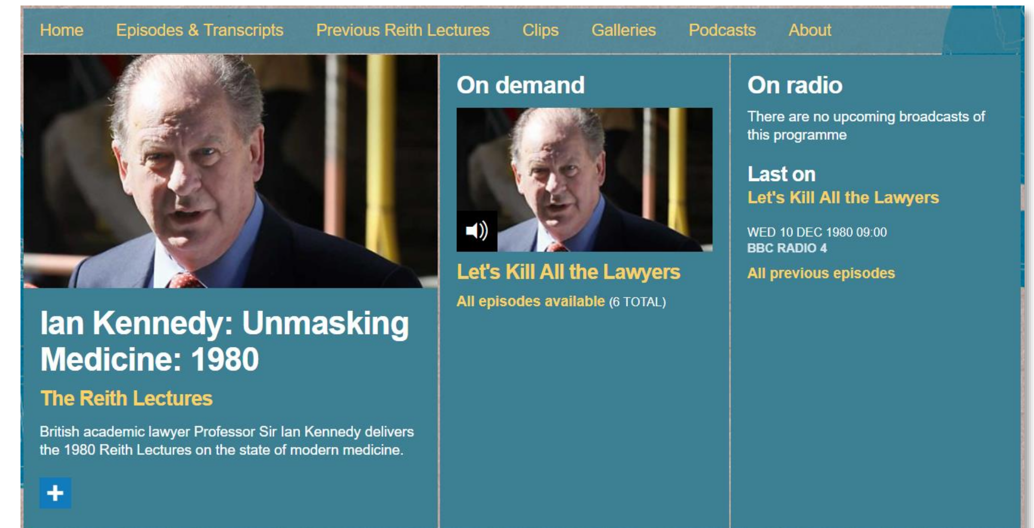
Petr Skrabanek, *The Death of Human Medicine and the Rise of Coercive Healthism* (1994, Social Affairs Unit), p. 19

Ian Kennedy, *The Unmasking of Medicine*

"Doctors make decisions about what is to be done. Some, but only some, of these decisions are matters of technical skill. I submit that the majority of decisions taken by doctors are not technical. They are instead, moral and ethical. They are decisions about what ought to be done, in light of certain values."

Ian Kennedy, *The Unmasking of Medicine*

(George Allen and Unwin, 1981), p. 78



University of BRISTOL

Petr Skrabanek

"While Kennedy's criticism of medicine [in his 1980 Reith Lecture, and then *The Unmasking of Medicine*] was perceptive and penetrating, he fell through the trap-door of the British custom of saying something 'constructive'. His 'blueprint' for the health of the nation had all the weaknesses of health-promotion claptrap. He fell for the ['nanny statist'] promotionist propaganda… **Where Kennedy missed the point was the need to reduce the power of professionals, including his own profession, rather than to shift some power from doctors to lawyers**."

Petr Skrabanek, *The Death of Human Medicine and the Rise of Coercive Healthism* (1994, Social Affairs Unit), p. 20

Rob Heywood and José Miola

"[T]he danger [with Kennedy's approach being assumed by judges] is that medical ethics becomes squeezed out of medical law. […T]he legal and ethical standards are now in effect identical. This is to be regretted and if such a trend continues then judges will find themselves effectively the arbiters of medical ethics as well as medical law. **Should this be the case, then we are also entitled to apply Kennedy's querying of unique competence to the judiciary: what makes *them* more qualified than anyone else to make ethical decisions?**"

Rob Heywood and José Miola, 'The Changing Face of Pre-operative medical disclosure: placing the patient at the heart of the matter,' *Law Quarterly Review* [2017] 133, 296-321, 320

Lenses through which to look (if only to learn from why we reject them)

- Professional dominance → internalised through vocational missions held (in theory) by members of a profession
- Ethics and law claiming medicine
- Public health claiming ethics and law
- Conscientious obligations *versus* conscientious objections?

Part 2

Public Health ‘Claiming’ Ethics and Law

University of BRISTOL

Public Health and Social Justice

- Public health is long-recognised as “**the science of social justice**”

➔ Richard Horton, ‘Offline: Where is public health leadership in England?’ *The Lancet* (2011) 378, 1060

- However: “**The language of public health was rarely invoked among bioethicists** [until the turn of the century]. Nonetheless, extraordinary contributions to public health ethics were made during this time, particularly in three areas of inquiry: the ethics of health promotion, resource allocation, and the civil liberties vs. public health questions precipitated by the HIV/AIDS epidemic.”

➔ Nancy Kass, ‘Public Health Ethics: From Foundations Frameworks to Justice and Global Public health,’ *Journal of Law, Medicine, and Ethics* (2004) 32, 232-242

Early 'Public Health Ethics'

Public Health Ethics as:

- Professional Ethics
- Advocacy Ethics
- Applied Ethics

Bruce Jennings, 'Frameworks for Ethics in Public Health,' *Acta Bioethica* (2003) 9:2, 165-176

"If there is a characteristic ethical orientation within the field of public health today, it is probably less theoretical or academic than practical and adversarial. **The ethical persuasion most lively in the field is a stance of advocacy for those social goals and reforms that public health professionals believe would enhance the general health and well-being, especially of those least well off in society**. Such advocacy is in keeping with the natural orientation toward equality and social justice, for so much of the research and expertise in public health throughout its history has focused on showing how social deprivation, inequality, poverty, and powerlessness are directly linked to poor health and the burden of disease."

University of BRISTOL

Challenge for Public Health and Ethics

- A distinct sort of field to ‘mainstream bioethics’
- Contrasts with Ian Kennedy’s work on medical expertise

- Public health about *inclusion* of (controversial) values within vocation and practice: ‘moral mandate’ within public health, ethics as part of it, as well as external critical reference point

➔ Ethics and law are part of social epidemiology: science/values…

Sridhar Venkatapuram, ‘Global Justice and the Social Determinants of Health,’ *Ethics and International Affairs* (2010) 24:2. 119-130

Political Persuasion and the Health of the Public in 2040

University of BRISTOL

- Public health is a broad school
- Paternalism sits differently, compared with a 'mainstream bioethical' perspective, in relation to public health activities
- Academy of Medical Sciences embraces the 'fifth wave' agenda of promoting a 'culture of health':
  - A politico-social ethic that stands in tension with dominant liberal principles and understandings of individual responsibility for health
- Law is crucial: regulation of social, commercial, built environments
- Ethics is crucial: public health as social justice is political bioethics

Part 3

Public Health and Political Engagement

Politics as Medicine for the Masses

- Johan Mackenbach builds on Rudolf Virchow's idea that: "Medicine is a social science, and politics nothing but medicine at a larger scale."

Rudolf Virchow, Der Armenarzt. *Medicinische Reform* 1848; 18: 125-7

- Mackenbach looks to the idea of a 'modern Virchow':
  - Population approach
  - Embrace of 'Health in All Policies'
  - Essential role perceived for law, politics, and governance

Johan Mackenbach, 'Politics is nothing but medicine at a larger scale: reflections on public health's biggest idea,' *Journal of Epidemiology and Community Health* (2009) 63:3, 181-184

Mackenbach's Problems of Politics for Public Health

- "Politics is a struggle between conflicting ideologies and interests, in which health provides only one of the many types of argument."

- "Politics operates on a timescale governed by elections and media attention, which is at odds with the greater timescale at which population health and its determinants can be expected to change. *An emphatically political approach to public health may also in the long run prove to be a self-defeating strategy, because of the dangers of politicisation*. Politics is divisive, and long-term support for public health can be eroded as well as strengthened by recurrent political debates."

Mackenbach, 'Politics is nothing but medicine at a larger scale,' p. 183

Mackenbach's "Ladder of Political Activism"

Top rung: Become a politician, with a view to realising public health agendas within an executive or legislative role

Third rung: Engage actively with political processes through lobbying efforts and engagement with politicians

Second rung: Promote public health knowledge and understanding in the political sphere, using methods such as addressing reports to government, speaking to media, advisory committee activity

Bottom rung: Be politically passive: public health information only disseminated within the health sector, and not engaging with politicians unless approached by them

University of BRISTOL

Where Should Public Health Professionals Stand on the Ladder?

- Richard Doll: “believed that the research worker’s job was to obtain the results, to report them and to comment on them if asked but to leave it to other people to act on them.”

Conrad Keating, *Smoking Kills: The Revolutionary Life of Richard Doll*, (Signal Books, 2009), p. 108

- Judith MacKay: “regrets that some people believe that putting research findings in the public domain is somehow ‘unprofessional’ and that few medical schools’ curriculums teach health advocacy (that is, how to communicate research findings to influence policy).”

Tony Delamothe, ‘Let us now praise famous men and women,’ *BMJ* 2012;345:e7605

University of BRISTOL

Where **Should** Public Health Professionals Stand on the Ladder?

- Richard Horton: “There was a time when public health in England was driven by passionately articulated values and compelling research, a time when its leaders were concerned about social reform and political change.”

Richard Horton, ‘Offline: Where is public health leadership in England?’ *The Lancet* (2011) 378, 1060

- Martin McKee: “is bold and outspoken: he issues unapologetic challenges to anyone—whether politicians, the media, or doctors themselves—who might be threatening public health.” He says: “The compromise and constraints of politics means that what you can do [as a politician] is extremely limited.”

Priya Shetty, ‘Martin McKee: champion of public health in Europe,’ *The Lancet* (2013) 381, 1089

Concluding Reflections

University of BRISTOL

Concluding Reflections

- Professional dominance → internalised through vocational missions to those inside of a profession
  - Do debates on validity of authoritative/domineering professions to internal dominance?
- Ethics & law claiming medicine/public health claiming ethics & law
  - What is the proper direction of travel? Contrasting Skrabanek's concerns with those of Heywood and Miola
- Conscientious obligations *versus* conscientious objections?
  - Can we learn from expressly value-laden obligations in the context of clinical bioethics/law?