

## ***Push and Pull between the Public and Professional***

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In order to protect research subjects and to improve patient care, ongoing examination about whether medicine should be a self-regulating profession, or whether the general public should have a role in setting guidelines for the ethical conduct of doctors, is essential. The historical arguments and events that inform, support, and refute self-regulation versus external regulation demonstrate that neither, on its own, is sufficient to ensure that doctors behave ethically. Instead, the collaboration between these two seemingly opposite poles has the potential to create the best ethical practices in order to provide strong research and clinical protections to subjects and patients. Both physicians and the general public must continue to evaluate the ethical conduct of the medical profession in order to protect the vulnerable and to uphold relevant ethical values.

Public oversight is necessary, but not sufficient, to assure ethical behavior on the part of physicians and biomedical scientists. Unchecked by self-regulation within the biomedical profession, public oversight has the potential to undermine its own valid objectives. Though antivivisectionists between the 1860s–1890s by no means comprised the entire nonmedical public corpus, they were nonetheless a formidable force criticizing research practices from outside the medical profession. In the 1890s, when antivivisectionists introduced a bill to Congress and brought to the public's attention their "critiques that emphasized the invasion of human rights that involuntary experimentation entailed," they had a justifiable argument that science running amok was endangering human values and human beings. Public ambivalence at that time was not unfounded: Antivivisectionists had in their arsenal Claude Bernard, a physician, who wrote thirty or so years earlier that although medicine needs vivisection to advance knowledge of physiology and scientific medicine, physicians and surgeons should "never [perform] on man an experiment which might be harmful to him to any extent, even though the result might be highly advantageous to science." Nevertheless, after the antivivisectionists introduced their bill to Congress, they undermined themselves: "[their] style of debate...encouraged defenders of research to dismiss accusations of human vivisection." Thus, without checks from within the general research and scientific communities, the antivivisectionists could not pass their heavily one-sided bill to protect research subjects.

Public oversight alone may also be ineffective and not assure ethical behavior on the part of physicians and biomedical scientists in certain political and social climates. In Nazi Germany, even though Nazi doctors themselves contributed enormously to the medicalization and conceptualization of German society as a body politic, the public's oversight would have done nothing to stop them: "The Nazis medicalized politics as much as they politicized medicine; problems of racial, sexual, or social deviance were transformed into 'surgical problems' in need of surgical solutions...[i]t took a powerful state to concentrate and unleash the destructive forces within German medicine." The medicalization and politicization of perverse values permeated public life. In our own country, even when a public body does oversee and support research in conjunction with the scientific and medical communities, it can still go grossly awry. The Public Health Service, which oversaw the Tuskegee Syphilis Study, was a public body that, along with the doctors involved, allowed social norms to inform "science" throughout the course of the study.

Transparency in public oversight of physicians and biomedical scientists, however, lends an air of legitimacy to the biomedical progress. Thus, some degree of public involvement is necessary in order to ensure that doctors and researchers behave ethically. The Seattle Artificial Kidney Center's Admissions and Policy Committee's ("Seattle Committee") determinations of social worth criteria and what satisfies those criteria (i.e., its measurement of people "in accordance with its own middle-class suburban value system...[that] rules out creative nonconformists, who rub the bourgeoisie the wrong way...") are ethically complicated. Yet, the mere fact that the committee existed at all was a step forward. The Seattle Committee was an imperfect attempt to bring the public into the medical realm to decide how to best allocate a scarce resource. Moreover, as Shana Alexander's Life Magazine article demonstrated, once the committee was out in the open, ("open," meaning the public knew of its existence), it was available for public discourse and judgment, the ultimate effect of which was the amendment of the Social Security Act in 1972 to cover end-stage renal disease. The Seattle Committee demonstrates how powerful the public can be in overseeing medicine and research, when medicine and research are on board. We must constantly evaluate and reevaluate—both within and without the medical profession—how good a job the general public in conjunction with the medical profession is doing to ensure ethical conduct. Neither, on its own, is enough to ensure ethical behavior. Public oversight helps to assure ethical behavior on the part of physicians and biomedical scientists, but without the ethical insight and self-reflection of medical professionals, public oversight is powerless on its own.

Codes of ethics and formal policies between and amongst the public and the medical community create a dialogue that leads to better protections for patients. The biomedical profession's internal codes are essential to promoting the Percivilian ethic of the "*profession's* [emphasis in the original] fiduciary responsibility for 'the ease, the health, and the lives of those committed to their charge,'" and influence policies that change the way medicine interacts with vulnerable populations. For instance, although the defense in the Nuremberg doctors' trial discovered on cross-examination that the American Medical Association's ("AMA") principles on human experimentation did not exist in their contemporary form pre-1946, still, those professionally-created principles carried immense influence in the creation of the Nuremberg Code as written by judges outside of the medical profession as part of their ruling.

Active public involvement via the government in the form of laws and policies has proven necessary in order to facilitate the goals of professional codes of ethics. In the 1968 hearings in front of the Subcommittee on Government Research of the Senate Committee on Government Operations, Dr. Christiaan Barnard asked Walter Mondale, essentially, to whom science and medicine are accountable. Hostile as it may seem, this is the kind of dialogue necessary between the biomedical profession and the public to facilitate advances in science and medicine, all while protecting patients and subjects. The public is essential in creating formal policies and laws that serve as external safeguards on the biomedical profession and that give teeth to the profession's internal codes.

As science and medicine advance, our codes, laws, and policies—both professional and public—can inform our choices even if they have not caught up to scientific advances. Members of the medical profession should be accountable to themselves and the public. Medicine is inherently a human endeavor, one in which physicians, patients, and the public have a stake. Laws, regulations, and codes of ethics are necessary to protect the vulnerable from abuses, but both public bodies and the medical profession must constantly reevaluate and assure compliance with them. Establishing transparency within the medical profession and a dialogue between the medical profession and the public will assure scientific progress and ethical practice.