

Exploitation in Clinical Research

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Disclaimer

- The views expressed do not represent any position or policy of the National Institutes of Health or the Department of Health and Human Services.
- Some of these views may be rejected by my colleagues in the Department of Clinical Bioethics.

Non-Exploitation and the NIH Canon

- Social value
- Scientific validity
- Fair subject selection
- Favorable risk-benefit ratio
- Respect for human subjects

Vulnerable Populations

- Economic Vulnerability
- Decisional Vulnerability
- International Research

Two Examples

- Maternal Fetal HIV Transmission Trial
- Surfaxin Trial

Maternal-Fetal Transmission of HIV

- Efficacy of long course treatment with Zidovudine (AZT) had been established
- Researchers wanted to investigate efficacy of short course treatment of AZT
- Compared efficacy of short course treatment with no treatment or placebo
- Benefit to developing societies
- Intentionally withhold established treatment

A Case Study: The Surfaxin Trial

- Discovery Pharmaceuticals and Surfaxin
- Respiratory Distress Syndrome
- Surfactant Therapy
- Cost is \$1,000 -- \$2,400

A Case Study: The Surfaxin Trial

- Research: South American nation
- Target Market: USA
- Annual per capita health care expenditures from \$60 to \$140.
- Placebo Controlled Trial

Exploitation Claims

"Unless the interventions being tested will actually be made available to the impoverished populations that are being used as research subjects, developed countries are simply exploiting them in order to quickly use the knowledge gained from the clinical trials for the developed countries' own benefit." (George Annas and Michael Grodin, "Human Rights and Maternal-Fetal HIV Transmission Prevention Trials in Africa," 88 American Journal of Public Health 560 (1998) at 561.)

Exploitation Claims

" . . . the placebo-controlled trials are exploitative of poor people, who are being manipulated into serving the interests of those who live in wealthy nations. . . ."

Ronald Bayer, "The Debate Over Maternal-Fetal HIV Transmission Prevention Trials in Africa, Asia, and the Caribbean: Racist Exploitation or Exploitation of Racism," 88 American Journal of Public Health 567 (1998), at 569.)

Exploitation Claims

"If the knowledge gained from the research in such a country is used primarily for the benefit of populations that can afford the tested product, the research may rightly be characterized as exploitative and therefore, unethical." (Council for International Organizations of Medical Sciences International Ethical Guidelines for Biomedical Research Involving Human Subjects, Revised draft, January 2002.)

Who is Exploited?

- The subjects?
- The community?
- Both?

The Exploitation Argument

- (1) If a practice is exploitative, it should not be permitted.

- (2) Placebo controlled trials (PCTs) such as **The Surfaxin Trial** are exploitative.

- (3) Therefore, PCTs should not be permitted.

Forms of Wrongdoing

- Exploitation
- Discrimination
- Paternalism
- Neglect
- Insufficient Benefits

Concept of Exploitation

- A exploits B when A takes unfair advantage of B. (True, but vacuous)

Exploitation Examples

Nazis. A, a Nazi medical scientist, wishes to discover how long a person can live in freezing water. He places B, who has been placed in a death camp, in freezing water. B dies within an hour.

Psychotherapy. A, a psychotherapist, proposes to B, his patient, that they have sexual relations. B, who is infatuated with her therapist, agrees

Exploitation Examples (cont.)

Kidneys. A, who is affluent, offers to pay B \$25,000 for one of his kidneys for purposes of transplantation. B, who is poor, agrees in order to better provide for his family.

Rescue. B's car is in a snow bank on a rural road late at night. A stops and ascertains that it will take him 2 minutes to pull it out. A offers to fix B's car for \$100.

Types of Exploitation

- Harmful and Nonconsensual Exploitation (Nazis, Psychotherapy,)
- Mutually Advantageous and Consensual Exploitation [MACE] (Kidneys, Rescue,)

A Challenge

- If a transaction is beneficial to both parties and is consensual, then it cannot be wrongfully exploitative
- I disagree

When are transactions unfair?

- A takes advantage of B's vulnerability?
- Surgery. A proposes to amputate B's leg for a fair fee. Because B will die unless she agrees to the amputation, B authorizes A to perform the surgery.

When are transactions unfair?

- When A gains much more than B?
- Unfair Surgery. A proposes to amputate B's leg for three times his normal fee. Because B will die unless she agrees to the amputation and can't find another surgeon, B authorizes A to perform the surgery.

When are transactions unfair?

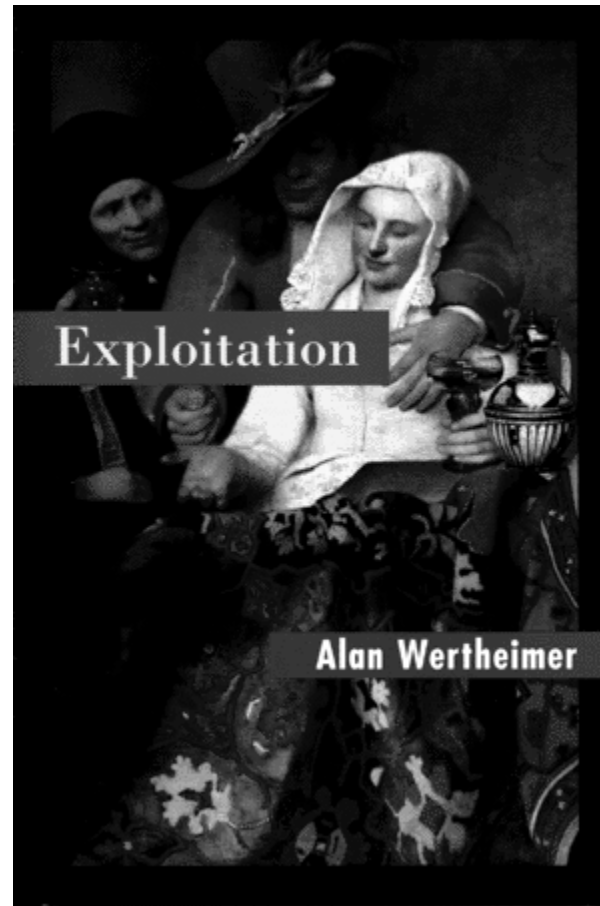
- A counter-intuitive proposition:

In exploitative transactions, the weaker party typically gains MORE than the stronger party. It is precisely because the stronger party does not gain all that much that she can threaten to walk away; it is precisely because the weaker party stands to gain a lot that he cannot walk away.

When are transactions unfair

- When A gains more than A should gain or when B gains less than B should gain.
- We need a theory of fair transactions
 - (For a try, see Wertheimer, Exploitation, Chapter 7).

Subliminal Advertisement



An Important Distinction

- A is taking unfair advantage of B
- A is taking (fair) advantage of an unfairness to B or, perhaps, B's unfortunate or unjust situation.
- Unemployed Lawyer: B has been unjustly fired. He was making \$150,000. A offers B a job teaching at a community college for \$30,000.

Another Important Distinction

- Transactional injustice v. background injustice
- It is a mistake to transfer our justifiable moral objections to someone's background conditions to the transactions which result from those background conditions

When is a Transaction Consensual?

- Competent
- Not Coerced
- Informed
- Reasoning is not distorted by benefits or inducements

Inducements and Consent

- (1) The inducements constitute a seductive offer that motivates subjects to consent to participate when doing so does not advance their interests (Kidneys?)
- (2) (2) Given the subject's objective circumstances, the inducements make it rational for the subjects to participate.

MACE

There are cases of alleged exploitation where B would not have agreed under better or more just background conditions, but where B is making a voluntary, informed, competent and rational choice under the circumstances in which she finds herself.

Should we allow MACE

- The wrongness of A's action does not entail that we should interfere with A's action.
 - The Holocaust Denier
 - The bigoted parent's will
 - The sex-preference abortion

The Permitted Exploitation Principle

Given the non-ideal conditions in which people find themselves, it is wrong to interfere with or seek to prevent transactions that are beneficial to the parties involved, that are worse for no one else, and to which the parties give appropriately robust consent even if the transaction itself is unfair, unjust, or exploitative.

A reason for interference

- Preventing A from transacting with B on unfair terms will lead A to transact with B on fairer terms.
- A will not walk away
- The strategic argument
- Minimum Wage Laws

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Two Questions

- Is the Surfaxin Trial exploitative?
 - We can discuss
- Should we prevent it? Should we insist that it not go forward in its proposed form?

Best Proven Care Principle

- "in any medical study, every patient -- including those of a control group, if any -- should be assured of the best proven diagnostic and therapeutic method. (The Declaration of Helsinki)

Does the BPC principle help?

- Is BCP a form of strategic interference?
- Maybe. Such regulations may prevent a “race to the bottom.”
- No. In the developing world, researchers may go elsewhere if PCTs such as Surfaxin Trial are disallowed.
- It’s an empirical question: Facts matter!

Fair Benefits: Reducing Exploitation of the Community

"Unless the interventions being tested will actually be made available to the impoverished populations that are being used as research subjects, developed countries are simply exploiting them in order to quickly use the knowledge gained from the clinical trials for the developed countries' own benefit." (Annas and Grodin)

"If the results of a clinical trial are not made reasonably available in a timely manner to study participants and other inhabitants of a host country, the researchers might be justly accused of exploiting poor, undereducated subjects for the benefit of more affluent populations of the sponsoring countries." (Crouch and Arras)

An Analogy

- If the running shoes produced in Thailand are used primarily for the benefit of populations that can afford the running shoes, the production of such running shoes may rightly be characterized as exploitative and therefore, unethical.
- Does the analogy work?

Fair Benefits: Some Questions

- If it is wrong to ask subjects to participate if they may never benefit, why does it become permissible because their fellow citizens may benefit?
- If it is not wrong to ask these subjects to participate, why is it necessary that their fellow citizens benefit?

How bad is exploitation?

- Nike employs workers for a wage that is very low by American standards, but above average in country X. Some claim that Nike is exploiting workers in X.
- Hikey (another manufacturer of athletic shoes) wishes to avoid the criticism that it is exploiting workers and builds a highly automated plant in the U.S.

Exploitation v. Neglect

An Ethical Double Standard?

"Residents of impoverished, postcolonial countries, the majority of whom are people of color, must be protected from potential exploitation in research. Otherwise, the abominable state of health care in these countries can be used to justify studies that could never pass ethical muster in the sponsoring country." (Lurie and Wolfe)

An ethical double standard?

- “Acceptance of this ethical relativism could result in widespread exploitation of vulnerable Third World populations for research programs that could not be carried out in the sponsoring countries.” (Marcia Angell, “The Ethics of Clinical Research in the Third World,” *New England Journal of Medicine*, Volume 847, September 18, 1997)

An important distinction

- Different principles are applied in developed and developing countries
- The same principle has different consequences when it is applied in developed and developing countries
 - Reasonable Risk
 - Informed Consent

Ethics as Regulation

- If ethical principles work, they affect behavior.
- We need to know *how* they affect behavior.
- We can't assume that good intentions and high-minded principles achieve their goals.
- Surfaxin Revisited

Self-Defeating Regulations

- The FAA once proposed requiring that infants be placed in a child restraint. They argued that this would save lives. The evidence suggests that it would have saved some lives of infants on airplanes, but it would actually lead to more deaths in cars. “Effects and Costs of Requiring Child-Restraint Systems for Young Children Traveling on Commercial Airplanes” (Archives Pediatric and Adolescent Medicine, 2003)

Conclusion

- We will not resolve questions as to the justifiability of studies such as ***The Surfaxin Trial*** by appeal to the derisive language of exploitation.
- We will resolve them by the examination of ethical arguments and by the study of the relevant data as to the effects of various policies on people's lives.