

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 Bioethics.

Non-Exploitation and the NIH Canon

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

Exploitation in Research

- Vulnerable populations
- Less developed countries
 - Placebo controlled trials when proven effective treatment is available
 - When intervention is likely to be used for benefit of developed countries
 - Off-shoring of clinical research

Three Examples

- Maternal-Fetal Transmission of HIV
- Surfaxin
- Diabetes Drug

Maternal-Fetal Transmission of HIV

- Efficacy of Long Course Treatment of AZT had been established
- Long Course Treatment was thought to be unfeasible and too expensive in less developed countries
- Researchers wanted to investigate efficacy of Short Course Treatment

Maternal-Fetal Transmission of HIV

- Compared efficacy of Short Course Treatment with no treatment or placebo
- Benefit to developing societies
- Intentionally withhold established treatment
- Local standard of care: nothing

The Surfaxin Trial

- Discovery Laboratories
- Respiratory Distress Syndrome
- Standard Care is Surfactant Therapy
- Cost is \$1,000 -- \$2,400
- Surfaxin was a “me-too” synthetic surfactant

The Surfaxin Trial

- Target Market: USA
- Discovery Labs wanted to conduct a placebo-controlled trial in South America
- Intentionally withhold standard treatment
- Local standard of care: nothing

Similarities and Differences

- Both studies involved denying some participants the standard of care
- There was a plausible scientific rationale for a placebo controlled trial in the short course trial
- There was no scientific rationale for a placebo controlled trial in Surfaxin
- Neither study would deny any participant treatment that she would otherwise receive

Diabetes Drug

- American pharmaceutical company wants to conduct a trial of a new diabetes medication
- Proposes conducting trial in India where there are many people with diabetes who are “treatment naïve”
- If successful, drug will be marketed in developed countries

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. (CIOMS)

Exploitation Claims

"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)

The Exploitation Argument

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

(2a) Placebo controlled trials (PCTs) such as The Short Course Trial or The Surfaxin Trial are Exploitative

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

Three Questions

- When is (2) true? When is a trial exploitative?
- Should we accept (1)? Should we prohibit a trial solely on the grounds that it is exploitative?
- Who is exploited?
 - The subjects? (Lurie and Wolfe)
 - The community? (CIOMS)
 - Both?

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.

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.

Exploitation Examples (cont.)

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

Slavery. C sells B to A as a slave. A forces B to work in the fields for bare subsistence.

Sweatshops. Nike hires unemployed people in Thailand. The employees work long hours for \$1 per hour, which is considerably above the average wage in Thailand.

Two Types of Exploitation

- Harmful and nonconsensual exploitation
- Mutually advantageous and consensual exploitation

Types of Exploitation

- Harmful and Nonconsensual
 - The exploiter benefits
 - The exploitee is harmed
 - The exploitee does not give valid consent
- Examples
 - Nazis
 - Psychotherapy
 - Slavery

Types of Exploitation

- Mutually Advantageous and Consensual
 - The exploiter benefits
 - The exploitee *also* benefits all things considered
 - The exploitee gives valid consent
- Examples
 - Kidneys (?)
 - Rescue
 - Sweatshop

Two Quick Thoughts

- Harmful and Nonconsensual exploitation is a no-brainer
- Mutually advantageous and consensual exploitation is more complicated
 - When is the transaction exploitative?
 - Should we prohibit it?

When is a transaction unfair?

- Justice Potter Stewart on pornography: “I shall not today attempt further to define the kinds of material I understand to be embraced . . . [b]ut I know it when I see it . . .”

Jacobellis v. Ohio, 378 U.S. 184 (1964)

- “Appearances can be deceiving”
- Rescuer travels the highway looking for people to help. He averages \$20 per hour.

When is a transaction unfair?

- Taking advantage of vulnerability
- Cannot be correct
 - Doctors
 - Lawyers
 - Plumbers
 - Director of homeless shelter
 - 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.

An Important Distinction

- A is taking unfair advantage of B
- A is taking 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.

When are transactions unfair?

- Disproportionate benefit: When A gains much more than B?
- Seems plausible
- *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.
- Who gains more?

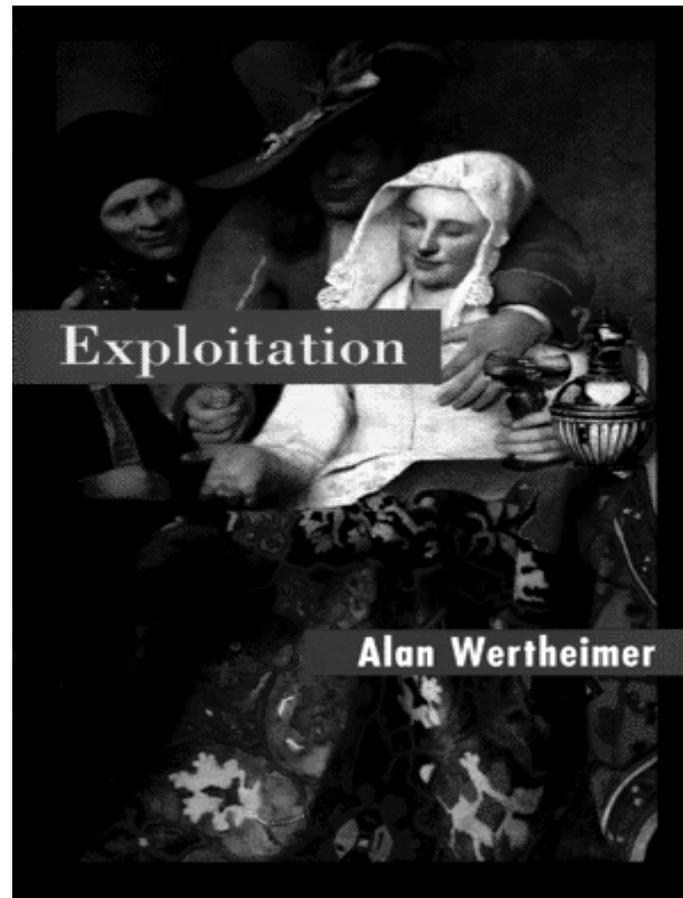
When are transactions unfair?

- The weaker party typically gains more utility than the stronger party in exploitative transactions
- Precisely because the stronger party does *not* gain all that much, she can threaten to walk away
- Bargaining power stems from low gain, not high gain

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
- I have one but I'll spare you
- I'll just assume that a transaction is exploitative so that we can examine major premise

Subliminal Advertisement



Should we prohibit MACE?

- (1) If a practice is exploitative, it should not be permitted
- Assumptions
 - A is under no obligation to transact with B
 - B gains from the transaction with A
 - B consents to transact with A
 - A's benefit from the transaction is unfair (by some criterion)

Exploitation v. Neglect

- 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.
- Hike (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.
- Who is acting unethically? Nike? Hike? Both?

Should we prohibit MACE?

- If interference is worse for the exploited, then probably not. Not subject “protection.”
 - Sweatshop
- If interference is better for exploited or prevents a “race to the bottom,” then probably so
 - Example: minimum wage laws
- We need to determine what will happen if we prohibit what we regard as exploitation
 - An empirical question

Exploitation in Clinical Research

Two Questions

- Is the Surfaxin Trial exploitative?
- If so, should we refuse to approve it?

Investigators and Regulators

A Division of Moral Labor?

- Investigators have to worry about the ethics of their activities: they should not exploit
- Regulators have to worry about the ethics of interfering with research: should they stop investigators from exploiting?
- We should sometimes allow others to do wrong
 - Free speech

Standard 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 standard care principle help subjects?

- Maybe. Such regulations may prevent a “race to the bottom.” Similar to minimum wage laws
- No. researchers may go elsewhere if PCTs such as Surfaxin Trial are disallowed. The “real” Surfaxin Trial
- It is an empirical question as to whether disallowing PCTs helps potential subjects.. (Facts matter!)

How bad is exploitation?

- “Abject poverty is harsh enough without people having to bear the additional burdens of serving as research subjects.”
(David Rothman)
- What if serving as a research subject is a benefit given the abject poverty?

Fair Benefits

"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

Fair Benefits: Some Questions

- If it *is* wrong to ask subjects to participate, why does it become permissible because their fellow citizens may benefit?
- If it is *not* wrong to ask these subjects to participate because they benefit and consent, why is it necessary that their fellow citizens benefit? (Diabetes Drug)

Ethics as Regulation

- Before we adopt principles for the regulation of research, we need to know how they affect behavior.
- We can't assume that good intentions and high-minded principles achieve their goals.

Self-Defeating Regulations: The FAA Example

- The FAA once proposed requiring that every infant be placed in a child restraint in its own seat rather than being held by an adult.
- Evidence suggested that this was safer for infants on planes.
- Evidence also suggested that the requirement would lead to more infant deaths because some parents would prefer to drive rather than buy an extra ticket .

“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 rigorous examination of ethical arguments and by the study of the effects of various policies on people's lives.