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Public Health vs. Individual Rights

- James Colgrove and Ronald Bayer, "Manifold Restraints: Liberty, Public Health, and the Legacy of *Jacobson v. Massachusetts*," *American Journal of Public Health* 95 (April 2005): 571-576.
- Amy L. Fairchild, "Diabetes and Disease Surveillance," *Science* 313 (14 July 2006): 175-176.
- Mark Fritz, "A Doctor's Fight: More Forced Care for the Mentally Ill," *Wall Street Journal* (1 February 2006): online edition.

The recent concern about H1N1 flu has cast these readings in a different, more immediate light. The basic question is what rights do governments and individuals have in the setting of public health emergencies. Historically, most of the debates have arisen in the setting of infectious disease (e.g. smallpox, yellow fever, tuberculosis, etc.). When is a quarantine justified? What about mandatory vaccination? etc. Mental health has always existed on the periphery here, with states long having the power to confine people thought to be dangerous because of mental illness. Recently, public health officials and theorists of various sorts had begun to wonder about how these precedents and tensions would play out in our new world of chronic disease. Can cities ban trans fats? What sorts of surveillance of obesity or diabetes is appropriate (e.g. some schools now put body-mass index on students' report cards)? With the emergence of H1N1, however, interest is once again focused on the use of state powers during outbreaks of contagious disease. Should we close the border with Mexico? Should the EU put a travel ban on North America? Should Mexico ban public gatherings, etc. So keep both sets of issues in mind as you do the readings: what is appropriate for contagious disease, and what is appropriate for non-contagious disease.

Colgrove and Bayer, "Manifold Restraints": Colgrove and Bayer, both historians of public health policy, discuss *Jacobson v. Massachusetts*, a crucial US Supreme Court case that established the precedent for compulsory treatment in the setting of public health emergencies. They situate the case within the history of public health policy over the 20th century. This article is full of important material. It describes the legacy of the case, as with its use as a precedent in *Buck v. Bell* (if this case doesn't ring a bell, review your notes from the readings and lectures on eugenics). It explains the reasoning of the US Supreme Court's decision to uphold compulsory vaccination: are you convinced by Justice Harlan's arguments? It then traces a curious history: once compulsory treatment was validated, it more or less disappeared from public health policy until the 1960s. Why did governments turn back to compulsory health policies in the 1960s? How did they move from concern with infections to concern with individual behaviors? -- John Knowles (whom you will read for Thursday's lecture) plays a prominent role here. In 1972 a court in Massachusetts upheld laws that required motorcyclists to wear helmets: are you convinced by the logic of the decision? Will it ever be possible to remove the tension between individual health and civil rights? What "manifold restraints" are being proposed to manage H1N1?

Fairchild, "Diabetes and Disease Surveillance": Diabetes, which was a rare disease in 1900, has emerged (hand-in-hand with obesity) as one of the major health challenges for the 21st century. There are two main types of diabetes: type I diabetes is an autoimmune disease (mix of genetic risks and environmental triggers) that often begins in childhood; type II diabetes is usually an adult-onset disease that occurs when obesity disrupts normal physiological mechanisms. Both cause enormous suffering, disability, premature death. Type II diabetes is far more common and is a major cause of rising health care costs; most policy efforts focus on type II diabetes. Given the suffering, the costs, and the existence of useful treatments, governments are interested in identifying the people having the most trouble managing their diabetes, and helping them to do a better job. This short piece from *Science* describes New York City's first-in-the-nation program. It raises a host of questions for bioethics -- Fairchild only scratches the surface. Is this violation of privacy justified by the need to control the "epidemic" of diabetes? Does it matter if the government's motivation is to improve health or to decrease health care costs? Is this a slippery slope: will the government impose penalties on patients who are non-compliant with diabetes treatment, or start requiring doctors to report patients who are overweight? What responses are appropriate for managing the growing burden of behavior-related chronic disease? Colgrove and Bayer provide some perspective here, as will the reading by Knowles.

Fritz, "A Doctor's Fight": As Colgrove and Bayer describe, public health law, which traditionally addressed infectious diseases, has diversified over the past fifty years to regulate a variety of non-infectious diseases. The most controversial area has been mental illness. As described in this article from the *Wall Street Journal*, there is a widespread public perception that people with mental illness, especially schizophrenia, are violent and dangerous. There have also been a series of high-profile cases of people killed by patients with untreated schizophrenia. These cases led many states to adopt strict laws that allow forced treatment of patients who are potentially dangerous. Is it ever appropriate to force treatment on an individual? Does it matter whether or not the person has a history of being violent, or does potential violence justify intervention? What data would help you make these decisions?

For anyone interested, I also posted a link to the US pandemic flu plan prepared in 2005 by the Department of Health and Human Services. If you get into the substance of it, there are lots of interesting discussions of rationing, travel restrictions, quarantine, etc. Many interesting final papers could be written about this material.

<http://www.hhs.gov/pandemicflu/plan/pdf/HHSPandemicInfluenzaPlan.pdf>