

TRANSPARENCY AS A DOUBLE-EDGED SWORD: PUBLIC HEALTH ETHICS PERSPECTIVE

– Maciej Macuga –

Abstract: Transparency has gained much attention in both public health and medical contexts. Alberto Giubilini, Rachel Gur-Arie and Euzebiusz Jamrozik make a valuable contribution to addressing the ethical question on the value and role of transparency by claiming that transparency is a necessary condition for the moral trustworthiness of experts. This comment is conceived as a follow-up on this issue. Usually, ethical discussions on transparency concern its consequentialist aspects such as the influence of disclosure on stakeholders’ trust. However, as the author will claim, there is something morally significant and non-consequentialist at stake. The aim of the comment is to highlight two important aspects concerning transparency. Firstly, its role in public health ethics, and, secondly, the moral basis for this role. Regarding the former, the author will claim that transparency influences moral legitimacy of coercive public health policies. Regarding the latter, the author will claim that by being transparent, policymakers respect stakeholders as moral agents capable of reason.

Keywords: Transparency, public health ethics, autonomy, coercion, vaccine passports, vaccine mandates, Kant

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1. The double-edged sword

Transparency has gained much attention in both public health and medical contexts from, amongst others, scholars, policymakers, and nongovernmental organizations. Since the outset of the COVID-19 pandemic, multiple concerns have been raised regarding flaws in the transparency of policymakers, vaccine manufacturers and other important agents of global response to this emergency.¹ Those concerns indicate a great need for scrutiny with regard to the issue of transparency in public health. In that context, Alberto Giubilini,

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¹ Transparency during COVID-19 pandemic has faced substantial problems (Jamrozik (2022): 13). Those regarded, amongst others: “knowledge hoarding and secret pricing” of vaccine manufacturers (Emanuel et al. (2021): 1015), untransparent and vague messaging concerning the policies of public authorities (Murdie (2022): 358-359), unclear use of experts’ recommendations in evidence-informed decision-making (Vickery et al. (2022): 6), or obstacles in revealing data from the clinical trials of the vaccines (Tanveer et al. (2022): 200-201).

Rachel Gur-Arie and Euzebiusz Jamrozik (later: the Authors) make a valuable contribution to addressing the ethical question of the value and role of transparency² by claiming that transparency is a necessary condition for the moral trustworthiness of experts.³ My present comment is conceived as a follow-up on this issue. Elsewhere in their text, the Authors claim that trust in the experts is, metaphorically speaking, a double-edged sword, in a sense that while it allows lay members of the society to rely in their decision-making on someone else, it by the same token makes them vulnerable to those they depend on.⁴ I will claim that in a morally significant sense, much like trust for the trustors, transparency is a double-edged sword as well for those who are supposed to be transparent. As pointed out by the Authors, transparency is an important element of *the experts' being morally evaluated by society* in establishing their trustworthiness. On the other hand, as I will suggest, it has further moral consequences as it also reveals something about *the society itself being evaluated by authorities and policymakers* which in turn impacts not just the reliability (trustworthiness) of the experts' competence, but ultimately the moral legitimacy of acts that are targeted at the society based on their recommendations. And in that sense, analogously to the vulnerability of the public mentioned by the Authors, experts and policymakers wielding, as it were, transparency to secure public compliance are also exposed to having their authority challenged by mishandling or neglecting its deeper moral dimension. In this context, my aim is to highlight two important issues concerning transparency. Firstly, I recount briefly its role in public health ethics and point to a particular function that I consider worth exploring. Secondly, I examine the moral justification for this function and respond to how it could potentially be criticized.

2. The role of transparency in public health: compliance vs. legitimacy

For the most part, debates on the value and role of transparency are often pragmatically oriented. They narrow down to the issue of the consequences of disclosure for stakeholders. A great example is the discussion about the influence of transparency on the social legitimacy of institutions.⁵ In the context of public health, investigations are oriented

² This comment is focused on the moral dimension of the question of the value and role of transparency (in other words: why transparency?). It can be distinguished from the other important questions on the topic. Those concern: Whose transparency? (who owns a disclosure to whom?); How to disclose? (the way of effectively delivering the disclosure; Lowe et al. (2022): 5); What transparency? (the content of the disclosure; O'Malley et al. (2009): 617) - the Authors contribute also to this question by claiming that experts should disclose uncertainty, disagreement, and values under their recommendations (Giubilini et al. (2025): 10). It is worth highlighting that the listed issues are related and can impact the final moral status of transparency in each context. For instance, it seems that not revealing disadvantages of a given policy can be seen as more morally dubious than not revealing facts in favor of it. Another example concerns a situation of revealing all the relevant information in a way that makes it difficult to reach the stakeholders, which seems to undermine the moral significance of messaging. Those examples indicate that the content of the disclosure as well as the method of disclosing can influence overall moral assessment of transparent messaging. Nevertheless, the question on the general value and role of transparency can be seen as prior in relation to the others - if the moral value of transparency would turn out insignificant, then a need to answer remaining questions would be negligible. For that reason, this paper aims at contributing to the first of the mentioned questions - why transparency.

³ Giubilini et al. (2025): 10.

⁴ Ibidem: 9.

⁵ de Fine Licht (2011): 185-186.

toward the influence of transparent messaging on citizens' willingness to comply, as well as on general trust in public and health authorities.⁶ Fostering decisionmakers' accountability⁷ and societal participation in decision-making⁸ are the usual candidates for the role of transparency. However, this consequentialist aspect does not seem to exhaust the moral dimension of the value of transparency in public health. My comment is built on a belief that there is something significant and non-consequentialist at stake, tied to the second edge of the transparency's sword as evoked above: pertaining not so much to the degree of societal compliance with health policies and mandates, but to the very moral legitimacy of those policies themselves. In what follows, I am therefore interested in the *impact of transparent messaging* (that includes providing reasons at the moment of the implementation of a policy as well as disclosure of relevant information that precedes potential implementation) *on moral legitimacy of coercive public health policies*, such as vaccine mandates or vaccine passports. Coercion in that context is understood as limiting one's options by eliminating or making more costly at least one of them.⁹ As some authors put it, ideally there would be no need for the use of coercion in public health,¹⁰ – however, reality differs from this ideal in a significant way, especially concerning the recent rise in vaccine hesitancy after the COVID-19 vaccination campaigns.¹¹ In that context discussing the underpinnings of the moral standing of public health policies seems desirable.

A claim that transparency impacts moral legitimacy of public health policies is deemed to be uncontroversial in the current ethical debate. However, does it hold even if the force of its usual consequentialist justification – in the spirit of the ones evoked above – diminish? In other words, is transparency valuable in public health ethics even if disclosure of information does not improve social trust in the authorities, does not improve their accountability or does not lead the people to making the decisions desired by the policymaker? I would like to defend an affirmative answer to this question. In the remaining part of the paper I discuss three potential arguments in its favor rooted in moral responsibility, personal autonomy, and respect for people as moral agents. Even though those ideas or values are strongly connected, especially in Kantian philosophy, I have decided to consider them separately, because, as it will turn out, they may be seen as motivating distinct arguments.

3. The moral justification for the transparency's legitimizing role

The first proposal in arguing for how transparency may secure legitimacy of health policies is to apply an idea widely used in ethics, namely knowledge as an epistemically necessary condition for moral responsibility.¹² Generally, the idea is that for a person to be held morally responsible for their actions they must possess (or be culpable of not

⁶ Bardosh et al. (2022a): 6; Bardosh et al. (2022b): 132; Cohen et al. (2020): 2108; Sapienza and Falcone (2022): 12.

⁷ Childress et al. (2002): 174-175; Emanuel et al. (2021): 1018.

⁸ Florini (2007): 341.

⁹ Giubilini (2019): 68; Savulescu et al. (2021): 11.

¹⁰ Giubilini and Savulescu (2019): 244.

¹¹ Leonardelli et al. (2023): 3-5.

¹² Rudy-Hiller (2018); from: Kraaijeveld et al. (2024): 161.

possessing) a certain degree of understanding of the given act, including its consequences. If they do not, they are not morally responsible for the act in question, and not being morally responsible excludes the legitimacy of a moral response e.g., a punishment. In the context of coercive public health policies, this would indicate that by being transparent, authorities provide the necessary information (or access to it) relevant to the choice in question. If one, despite having the information, does not comply as the authorities intended, then the possibility of using the coercion to enforce compliance seems more morally legitimate, all things being equal. *Prima facie*, this solution seems to be able to provide the grounds we are looking for. However, there is a problem here: it differs from common moral intuitions concerning public health policies, which I believe are conceived as an instrument for achieving health-related goals, rather than morally sound repercussions or expressions of blame for not meeting a desirable standard of conduct. Placing the weight of the intuition on moral responsibility seems to disrupt the picture by moving it into the latter, arguably problematic, view.

The second proposal refers to the notion of epistemic conditions for exercising personal autonomy as it is applied in the medical ethics. Generally, the idea is that to properly exercise autonomy – to make rational choices based on one’s desires, preferences and life plans, one needs to possess certain knowledge concerning the choices in question. Thus, transparency provides the required information to an agent so that the mere possibility of an autonomous choice is secured. A paradigmatic example of this situation from a medical context is, of course, disclosure of information by a doctor to a patient so that a decision concerning medical intervention can be made by the latter.¹³ As personal autonomy is usually seen to be the main value or right that is being infringed upon by the use of coercion, applying this idea to the context of public health seems appealing.¹⁴ By being transparent, authorities offer relevant information to society, providing it with relevant reasons for making the desired choice. If, however, it is not made, then the use of coercion seems to be more morally legitimate. This would be a straightforward solution to the legitimacy challenge in question. There is, however, also a problem in this case. To properly exercise personal autonomy, an agent must possess some degree of understanding of the situation. This means that the mere possibility of accessing the information disclosed by the authorities is not enough to fulfill this requirement. It is not guaranteed that the public will in fact learn from such disclosed information (or even seek it at all) and therefore use it in the process of decision making. What is more, requiring that everyone absorb the relevant data is too demanding for using in

¹³ Beauchamp and Childress (1977/2012): 125-127.

¹⁴ This argument may seem counterintuitive at first glance. The coercion infringes upon exercising autonomy, so how does it make sense to claim that transparent disclosure of relevant information can contribute to exercising autonomy? However, it must be noted, interference with personal autonomy is gradual – such autonomy can be infringed upon to a greater or lesser extent. If the argument holds, then it would lead to a conclusion that a policymaker interferes with autonomy less when being transparent than in an opposite situation. In the situation evoked at the beginning of the paragraph where disclosing relevant information precedes the implementation of a coercive policy, this claim is even stronger as the stakeholders have time to make a fully autonomous decision. Their failure to make “the right one” can be seen (so the argument goes) as rendering the implementation of a coercive policy more morally legitimate.

the context of public health: implementation of this standard by the authorities seems impossible.¹⁵ It is therefore not solely in personal autonomy that we will find grounds to justify transparency as legitimizing what the authorities seek to mandate – we need to look for a further reason.

Before we do so, there are two potential answers to my above conclusion that should be addressed. Firstly, one might claim that by ignoring public messaging members of the society are also exercising their personal autonomy. In other words, they presumably make an autonomous choice not to pay attention to the disclosed information. This certainly is a plausible point. However, it is not a good explanation of the value of transparency in public health. The disclosure of information should benefit exercising personal autonomy regarding the choice relevant to the substance of the disclosure (e.g., whether to get vaccinated), and not the liberty of learning or ignoring public messaging. The latter is not the one that transparency aims at benefiting. A second potential objection might point to the fact that if some people are not actually benefiting from the disclosed information, then perhaps the value of transparency in public health is altogether overestimated. In other words, according to the objection, there is no point in requiring transparency from the authorities if the stakeholders are not interested in gaining the information. But my dismissal was not aimed at the relevance of transparency *as such* in the light of the practical impossibility of reaching everyone with informational campaigns. It was about the value of transparency in providing – for that purpose, indeed preferably universal – moral legitimacy for coercive health policies. And so, given that the “distance” between the author of disclosed information and a stakeholder is greater in the case of public health policies than in medical contexts (usually a doctor needs to ensure that the patient gained and understood relevant information, while policymakers cannot similarly reach every member of society) it is simply plausible to expect that there are some stakeholders who either do not bother to acquire the information, or do not understand it fully, and as a result do not stand to learn from the messaging from public authorities. This is not to say that those who do acquire information cannot benefit in terms of exercising their personal autonomy, or that because there are some who remain uninformed the entire value of transparency as an effort is undermined. But it does mean that transparency *as the basis of legitimacy* for policies affecting the entire society may be problematic. What I am trying to suggest is that benefiting personal autonomy is not the only – or not even the main – non-consequentialist moral reason to value the transparency of policymakers. In other words, I believe that transparency in this context would still be valuable and would still have influence on the moral legitimacy of coercive policies even if a considerable part of society would not learn the disclosed information. The last of the three proposals I put forward applies exactly to a situation in which the public messaging does not overcome “the veil of ignorance” and does not reach its desired stakeholders.

This third proposal relies on appealing to certain deontological¹⁶ intuitions, especially to the idea of treating people as ends and not merely as means as well as to

¹⁵ I am not trying to suggest that the policymakers should not put an extensive effort into achieving this ideal. Quite the contrary.

¹⁶ My intention is not to invoke specific framework constructed by Kant, but rather appeal to certain intuitions from a broader tradition in ethical thinking. I believe it would allow for making the argument more universal.

the idea of respect for persons as moral agents. In general, it can be claimed that by being transparent, the authorities are treating members of society as moral agents. That's because disclosing relevant information to the people is a manifestation of seeing them as capable of acting upon reason and therefore treating them not merely as means.¹⁷ Failure at being transparent can be seen as a failure to treat others with respect.¹⁸ And the significant advantage of this proposal over the second one just discussed is that it concerns the way the public authorities act, regardless of the attitude of the stakeholders. In other words, valuing transparency in public health due to it being an expression of treating people as moral agents holds even if people decide to ignore the public messaging. Going back to our initial challenge, accepting this idea would indicate that coercive public health policies that are built upon the treatment of people as equal moral agents are more legitimate than those that fail to meet that standard. For instance, a mandatory vaccine policy would be more morally legitimate if it was preceded by transparent public messaging regarding, among others, the risks and benefits of the vaccines, the course of research, or indeed the existing experts' disagreement and uncertainty as explained by the Authors cited at the beginning. Moral legitimacy of that policy would be improved despite the fact that, at the end of the day, some or even many stakeholders did not use the information for making the choice the policymaker would hope for. Interestingly, this solution seems to explain certain semantic intuitions of some scholars who say that people "deserve" to know or "are owed" an explanation in the context of policies that infringe upon their rights.¹⁹ It is also worth pointing out that the third proposal is compatible with the second one – both of them actually give strong non-consequentialist reasons for seeing transparency as valuable in establishing the moral legitimacy of public health policies.

There is one further potential objection, aimed specifically at this third argument, that I wish to address, as it would narrow the scope of its applicability, if successful. It concerns public health policies that are paternalistic, namely policies that aim not at coercing people for the sake of other people, but for the sake of themselves.²⁰ Some scholars claim that paternalism is especially disrespectful towards peoples' moral agency as it deprives them of authority over judging what is good for them.²¹ Therefore, as the objection could go, the argument from respecting peoples' moral agency does not apply to a policy that is highly disrespectful in that sense from the very beginning. However, I believe that this worry is not sound. Even if we accept the claim that paternalistic coercive public health policy would be comparatively more disrespectful towards persons as moral agents (in absolute terms) than a non-paternalistic one, transparency seems to have the same moral impact and a qualifying value in both cases. If policymakers implement paternalistic public health policy without disclosing relevant information or providing adequate justification for doing so, they are being more disrespectful than if they did otherwise, and the resulting policy has less (or to accommodate the critics:

¹⁷ Plaisance (2007): 188.

¹⁸ Bok (1999); from: Plaisance (2007): 188.

¹⁹ Lewis and Schüklenk (2022): 141.

²⁰ Kraaijeveld (2020): 192.

²¹ Childress et al. (2002): 176; Buchanan (2008): 15-16.

even less) moral legitimacy that it would otherwise enjoy. Therefore, the argument from respect for persons as moral agents applies to coercive public health policies regardless of whether they are justified in paternalistic or non-paternalistic terms.

To sum up, transparency influences the moral legitimacy of coercive public acts, especially in the context of public health policies. That is because by disclosing relevant information policymakers on the one hand enable and promote the engaged stakeholders' autonomy by providing them with reasons to act on (especially, if the disclosure precedes the implementation of a coercive policy), and on the other, and most importantly, they treat them with respect for persons as moral agents capable of reason. And inversely, failing to act transparently and provide an adequate degree of disclosure is not only corrosive for the public trust in experts and authorities (leading in practical terms to hesitancy or non-compliance, as pointed out by the Authors), but on a deeply philosophical level it critically undermines the legitimacy of their policies: which is precisely the second edge of the transparency's sword, rendering those in charge of withholding or releasing relevant data as they please vulnerable to the loss of the moral mandate in exercising their power.

Two final remarks need to be highlighted here. Firstly, the claim about transparency's impact on moral legitimacy is applicable only to acts whose legitimacy or illegitimacy is meaningfully up for a debate. In that sense, if an act is morally illegitimate to begin with, transparency cannot change anything – for instance, a transparent announcement of an act of torture would not make the act less illegitimate or wrong. Secondly, I am not trying to suggest that the non-consequentialist reasons I proposed are sufficient to justify full disclosure. It is reasonable to suspect that in some situations potential unintended negative consequences (concerning e.g., a decrease in the social trust in the authorities) would make the disclosure morally undesirable, all things considered. I have been merely pointing out that there is something relevant and non-consequentialist in the equation. If that idea seems appealing, we are just getting started, as the exact weight of transparency in establishing the legitimacy of coercive public health policies is yet to be determined. In that context it would be worth to move the inquiry one step further, and ask the following question: Can a coercive public health policy ever be legitimate if the policymaker fails to meet the relevant standards of transparency? If a negative answer is not at first glance morally outrageous, then there is a long but important discussion ahead.

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