

The Nuances of Consent: Prisoners and Medical Experiments

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If a child's parents hold their favorite toy or game over their head to get them to clean their room, then that child is not following through on their chores out of their own free will. If someone finds themselves in a "do or die" situation, and does what they need to do to get out of danger, then they are not acting out of their own free will. The same concept of consent should be applied to people who are currently incarcerated in the prison system, specifically in relations of medical staff and prisoners. Even if verbally declared, there is no ethical way for a prisoner to give consent to medical experiments being performed on them. Doctors performing experiments have entirely too much power over an incarcerated person. This power is given to them both socially and legally. It is an ethically gray area, but consent should be black and white – and a situation of "gray" is not a situation of consent.

To understand the moral implications of performing medical experiments on prisoners, one would need to understand the definition of consent. Consent is the voluntary (verbal or enthusiastic) participation in an activity or desires of another. The fundamental aspect of consent is that both or all parties are using their own true volition with nothing to pressure, force, or intimidate them into situations that they don't necessarily want to be in. Sometimes, intimidation is not blatant but a silent undertone of a situation, which creates a "gray area" of consent. Intimidation factors can include power imbalances between authority and inferiority, education and class disparities between the knowledgeable/wealthy and the ignorant/impoverished, as well as an imbalance of mental capabilities between all parties involved. People who do not

necessarily have the upper hand in the previous scenarios (inferior, ignorant, impoverished, etc..) are more inclined to be manipulated, pressured, or intimidated to participate in activities that they wouldn't otherwise join with a clear mind.

In terms of ethicality of medical experiments and prisoners, if going by the given definition of consent, then there is no ethical way for doctors to gain consent from prisoners. There is an irrefutable power dynamic between a doctor and their incarcerated patients socially and legally. In a social sense, a doctor has access to money, education, and interpersonal communications to the outside world while a prisoner lacks all of the above. Whether the doctor uses these connections against a patient or not, the doctor's privileges is an unspoken leverage, possibly leading prisoners to consent to their experiment out of either intimidation or admiration. If the case is the latter, then their consent is given out of ignorance, which is a nonconsensual situation as well. Additionally, the prisoner and the doctor already do not share an equal amount of knowledge about the experiment, research, or the more intricate topics within the medical field itself. Consent would require the patient, incarcerated or not, to understand what they are getting themselves into. If a prisoner does not understand the experiment, and the status of the doctor is distracting them from understanding the experiment and the possible harm it could do to them, then again, this is not a consensual situation.

Not only are there unfair social dynamics between the prisoner and the doctor, but there are also legal, constitutional elements at play in the roles of the incarcerated and the researcher. By the Thirteenth Amendment of the United States, "Neither slavery nor involuntary servitude, except as a punishment for crime...shall exist within the United States...", or in simpler words, the act of owning another person (slavery/hostage/captive) is illegal unless said person is jailed – making prisoners property of their correctional center and states. Conceptually, there is no

difference between medical experiments performed on slaves compared to medical experiments on prisoners as they legally belong to the government. The power imbalance between “owner” and “property” is enough to deem any experimental procedure on a prisoner unethical as the position of the prisoner is inherently under that of the doctor with no room for equality. Once more there is an unspoken leverage or control that taints the true autonomy of someone on the receiving end of the research.

Verbal consent is voided as the real power to say yes, no, or set boundaries is a farce to the “owned” party. That power is even further threatened because of the low regard for prisoners which is a sentiment shared in both the legal and outside world. Most are simply seen as criminals, stripped of their humanity and value while doctors are typically seen as heroic, professional, intelligent, and affluent. Anything that could go wrong during their experiment would not be questioned by anyone beyond the experiment. There would be no real justice for the prisoner or their families. Unless their practice was gross and reminiscent of historical atrocities, the doctor would more likely than not get off from the situation without having to pay a cent in reparations or compensation. If there is no power for justice, there is no power for consent either.

It should be noted that a lot of prisoners that take on the offers of medical experiments do so in hopes or promises that their cooperation could reduce their sentence. This is a quid pro quo situation, or “this for that,” a dynamic that is actually categorized as harassment under Title IX of The Education Amendments of 1972. The principle of sacrificing one’s bodily autonomy and submitting to another’s wants in *hopes* of a reward in return itself is both unethical and illegal. Quid pro quo agreements prey on and exploit the vulnerability of another. For a prisoner, that vulnerability is their life and the freedoms and rights that are supposed to be granted to them at

birth. Leveraging *freedom* over someone is disgusting – no matter how it is spun or how enthusiastic the incarcerated patient is to give it. Their consent is once more manipulated and coerced out of them with the promise of freedom in return.

There are some that think that declaring experiments on incarcerated prisoners illegal is also violating their autonomy to choose. There are also people who believe that prisoners are criminals, and as a criminal, they have forfeited their rights and their autonomy with it and these experiments are ethically justifiable. Both are dangerous rhetorics to spread. If prisoners have forfeited their right to consent, then any experiment within the prison system is unethical, and they should never be in a position to accept or deny a proposal of an experiment. Furthermore, stripping prisoners of their right to their bodies and to consent is more than unethical, but inhumane as they are already being punished for their crimes. Autonomy does not begin or end within the bounds of the law. Everyone has a right to choices that affect their body and deserve to make those choices without coercion or pressure – including “criminals.”

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